CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 33 APRIL 28, 1999 NO. 17

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 99–39)

SYNOPSES OF DRAWBACK RULINGS

The following are synopses of drawback rulings approved August 3, 1998, to November 17, 1998, inclusive, pursuant to Subparts A & B, Part 191 of the Customs Regulations.

In the synopses below are listed for each drawback ruling approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the date the application was signed, the Port Director to whom the ruling was forwarded to or approved by, the date on which it was approved and the ruling number.

Dated: April 7, 1999.

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

(A) Company: Carlton Company, Inc.
Articles: Cold heading wire
Merchandise: Chain saw blades
Application signed: December 3, 1997
Ruling forwarded to PD of Customs: New York, October 23, 1998
Ruling: 44–05618–000

(B) Company: Chevron Chemical Co.
Articles: Polyisobutyl succinic anhydride (PIBSA); OLOA 2564H and OLOA 2564R
Merchandise: Polybutene
Application signed: May 18, 1998
Ruling forwarded to PD of Customs: Houston, August 14, 1998
Ruling: 44–05540–000

(C) Company: Ciba Specialty Chemicals Corp.
Articles: Methylene dianiline (MDA)
Merchandise: Araldite
Application signed: June 15, 1998
Ruling forwarded to PD of Customs: New York, November 8, 1998
Ruling: 44–05629–000

(D) Company: The Dow Chemical Co.
Articles: Propylene oxide
Merchandise: Propylene
Application signed: February 26, 1998
Ruling forwarded to PD of Customs: Houston, September 11, 1998
Ruling: 44–05584–000

(E) Company: The Dow Chemical Co.
Articles: Liquid epoxy resin (LER)
Merchandise: Liquid bisphenol-A
Application signed: August 5, 1998
Ruling forwarded to PD of Customs: Houston, November 10, 1998
Rulilng: 44–05632–000

(F) Company: E. I. DuPont de Nemours & Co.
Articles: KA (ketone alcohol); adipic acid; hexamethylene diamine (HMD); nylon resins; nylon fibers
Merchandise: Cyclohexane; adiponitrile; hexamethylene diamine (HMD); adipic acid
Application signed: June 30, 1997
Ruling forwarded to PDs of Customs: New York & Boston, August 3, 1998
Ruling 44–05529–000

(G) Company: Eastman Chemical Co.
Articles: DOA (Dioctyladipate); tenite butyrate; tenite propionate
Merchandise: Adipic acid; 2-ethyl hexanol
Application signed: March 5, 1998
Ruling forwarded to PD of Customs: Houston, September 2, 1998
Ruling: 44–05579–000

(H) Company: Eastman Chemical Co.
Articles: Color developer 3 (CD-3)
Merchandise: N-ethyl-m-toluidine, BU a/k/a NEMT
Application signed: April 30, 1998
Ruling forwarded to PD of Customs: Houston, September 18, 1998
Ruling: 44–05587–000

(I) Company: Eastman Chemical Co.
Articles: Spray polymer
Merchandise: 2,2-azobisisobutyronitrile (AIBN); 2,2-azobis(2,4-dimethyl-valeronitrile) (V–65); T-butyl acrylate (T-BA); silicone macromonomer (SMM)
Application signed: July 8, 1998
Ruling forwarded to PD of Customs: New York, October 23, 1998
Ruing: 44–05614–000

(J) Company: ESM II Inc.
Articles: Magnesium metal powder; lime-magnesium blended powders
Merchandise: Magnesium chips (turnings)
Application signed: May 28, 1998
Ruling forwarded to PD of Customs: New York, September 23, 1998
Ruling: 44–05589–000

(K) Company: Filtrona Richmond, Inc.
Articles: Cigarette filter rods
Merchandise: Activated granulated carbon
Application signed: March 2, 1998
Ruling forwarded to PD of Customs: New York, August 3, 1998
Ruling: 44–05530–000

(L) Company: Formosa Plastics Corporation, U.S.A.
Articles: Polypropylene
Merchandise: Propylene
Application signed: May 17, 1998
Ruling forwarded to PD of Customs: Houston, September 9, 1998
Ruling: 44–05583–000

(M) Company: Formosa Plastics Corporation, U.S.A.
Articles: Low density linear polyethylene (LDLPE); high density polyethylene (HDPE)
Merchandise: Ethylene
Application signed: May 6, 1998
Ruling forwarded to PD of Customs: Houston, September 9, 1998
Ruling: 44–05582–000

(N) Company: Four Star Industries, Inc.
Articles: Men's and boy's neckwear
Merchandise: Silk and polyester fabrics
Application signed: July 28, 1998
Ruling forwarded to PD of Customs: New York, November 17, 1998
Ruling: 44–05634–000

(O) Company: The Geon Co.
Articles: Vinyl chloride monomer (VCM)
Merchandise: Ethylene; ethylene dichloride (EDC)
Application signed: June 3, 1998
Ruling forwarded to PD of Customs: Houston, November 8, 1998
Ruling: 44–05626–000

(P) Company: Imation Corp.
Articles: Magnetic tape cartridges for data storage applications
Merchandise: Metal particle tape (metal particulate coating on polyethylene terephthalate substrate)
Application signed: August 21, 1998
Ruling forwarded to PD of Customs: San Francisco, October 22, 1998
Ruling: 44–05610–000

(Q) Company: Kittrich Corp.
Articles: Shelf lining paper
Merchandise: Flexible and soft vinyl PVC films (clear, solid, and printed)
Application signed: May 14, 1998
Ruling forwarded to PD of Customs: Boston, August 4, 1998
Ruling: 44–05531–000

(R) Company: Novartis Crop Protection, Inc.
Articles: Prodiamine technical; prodiamine 65WG
Merchandise: 2,4-dichloro-3,5-dinitrobenzotrifluoride (DCDNTFB)
Application signed: August 24, 1998
Ruling forwarded to PD of Customs: New York, November 16, 1998
Ruling: 44–05635–000

(S) Company: Penn Color, Inc.
Articles: Pigment dispersion color concentrates
Merchandise: Monolite Green GLX; Solsperse 20000 and Solsperse 12000
Application signed: January 9, 1998
Ruling forwarded to PD of Customs: New York, September 28, 1998
Ruling 44–05593–000

(T) Company: Philip Morris Inc.
Articles: Cigarettes
Merchandise: Cigarette paper
Application signed: October 14, 1998
Ruling forwarded to PD of Customs: New York, October 30, 1998
Ruling: 44–05615–000

(U) Company: Read-Rite Corp.
Articles: Ceramic substrates containing partially fabricated semiconductor devices
Merchandise: Ceramic substrates
Application signed: June 19, 1998
Ruling forwarded to PD of Customs: San Francisco, October 13, 1998
Ruling: 44–05606–000

(V) Company: Rhein Chemie Corp.
Articles: Rubber curing compounds
Merchandise: N-cyclohexyl-2-benzothiazole sulfenamide (CBS)
Application signed: February 27, 1998
Ruling forwarded to PD of Customs: New York, September 23, 1998
Ruling: 44–05591–000

(W) Company: Rubicon Inc.
Articles: Methylene diphenyl diisocyanate (MDI)
Merchandise: Nitrobenzene
Application signed: August 10, 1998
Ruling forwarded to PD of Customs: New York, October 13, 1998
Ruling: 44–05605–000

(X) Company: Shell Oil Co.
Articles: Epon resin
Merchandise: Diphenylol propane polycarbonate; epichlorohydrin
Application signed: April 15, 1998
Ruling forwarded to PD of Customs: Houston, August 7, 1998
Ruling: 44–05534–000

(Y) Company: Somerville Technology Group
Articles: Aluminum-zirconium tetrachlorohydrex-gly liquid; aluminum-zirconium tetrachlorohydrex-gly dry product; aluminum-zirconium trichlorohydrex-gly dry product; aluminum-zirconium pentachlorohydrex-gly product
Merchandise: Zirconium carbonate paste; zirconium oxychloride; glycine
Application signed: September 11, 1997
Ruling forwarded to PD of Customs: New York, September 2, 1998
Ruling: 44–05577–000

(Z) Company: Uniroyal Chemical Co., Inc.
Articles: Ethylene propylene nonconjugated diene rubber (EPDM rubber) a/k/a Royalene
Merchandise: Dicyclopentadiene (DCPD); 5-ethylidenorbornene (ENB); paracresol
Application signed: June 16, 1997
Ruling forwarded to PD of Customs: New York, September 28, 1998
Ruling: 44–05595–000

(T.D. 99–40)

19 CFR Part 122

WITHDRAWAL OF INTERNATIONAL AIRPORT DESIGNATION OF AKRON FULTON AIRPORT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of the Customs Service by withdrawing the international airport designation of Akron Municipal Airport (now functioning as Akron Fulton Airport) and by designating Akron Fulton Airport as a landing rights airport instead. The change is made as part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the general public.

EFFECTIVE DATE: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Betsy Passuth, Office of Field Operations, 202–927–0795.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities and resources and to provide better service to carriers, importers and the general public, Customs proposed to withdraw the international airport designation of Akron Municipal Airport (now functioning as Akron Fulton Airport) and to designate Akron Fulton Airport as a landing rights airport instead. A Notice of Proposed Rulemaking to this effect was published in the Federal Register (63 FR 11383) on March 9, 1998. The designation as an international airport was proposed to be withdrawn because of lack of sufficient international travel through the airport and because of failure of the airport operator to maintain an adequate facility.

DETERMINATION

No comments either supporting or opposing the proposal were received. After further consideration of the proposal, Customs has deter-

mined to proceed with withdrawing the international airport designation of Akron Fulton Airport and to designate the airport as a landing rights airport instead. The Customs inspectors stationed adjacent to the Akron-Canton Regional Airport will be able to provide Customs services to international aircraft at the Akron Fulton Airport on an as-needed basis.

Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands, consolidates and makes other changes to Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although a notice on this subject matter requesting public comment was issued, the subject matter is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this final rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this are exempt from Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Customs duties and inspection, Freight, Imports, Organization and functions (Government agencies).

Amendment to the Regulations

Accordingly, Part 122 of the Customs Regulations is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The general authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

* * * * * * *

2. The list of international airports in § 122.13 is amended by removing "Akron, Ohio—Akron Municipal Airport" in the "Location and Name" column.

Raymond W. Kelly,
Commissioner of Customs.

Approved: March 12, 1999.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, April 15, 1999 (64 FR 18566)]

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 4–1999)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of March 1999 follow. The last notice was published in the CUSTOMS BULLETIN on March 31, 1999.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Michael Smith, Acting Chief, Intellectual Property Rights Branch, (202) 927–2330.

Dated: April 8, 1999.

MICHAEL SMITH,
Acting Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

04/01/99 U.S. CUSTOMS SERVICE PAGE 1
10:51:23 IPR RECORDATIONS ADDED IN MARCH 1999 DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP9900020	19990303	20190303	BRISTOL BED	L. POWELL COMPANY	N
COP9900021	19990303	20190303	KEYSTONE BED	L. POWELL COMPANY	N
COP9900022	19990303	20190303	PRESCOTT BED	L. POWELL COMPANY	N
COP9900023	19990303	20190303	SARASOTA BED	L. POWELL COMPANY	N
COP9900024	19990303	20190303	TUSCANY BED	L. POWELL COMPANY	N
COP9900025	19990304	20161101	NINTENDO 64 CONTROL SET PACKAGING	NINTENDO OF AMERICA INC.	N
COP9900026	19990305	20180727	TY INC. BUMBLE	TY INC.	N
COP9900027	19990305	20180727	TY INC. ECHO #4180	TY INC.	N
COP9900028	19990305	20180727	TY INC. SNOWBALL #4201	TY INC.	N
COP9900029	19990305	20180727	TY INC. GOBBLES #4034	TY INC.	N
COP9900030	19990305	20180727	TY INC. MAPLE #4600	TY INC.	N
COP9900031	19990317	20190317	FURBY (WITH TUFT)	TIGER ELECTRONICS, LTD.	N
COP9900032	19990311	20190322	PEPSTARWHITE	PLANET EARTH IMPORTS INC.	N
COP9900033	19990311	20190311	C98205 & P98205-WHT, BLK	PLANET EARTH IMPORTS INC.	N
COP9900034	19990311	20190311	PEPETROBLK, WHI	PLANET EARTH IMPORTS INC.	N
COP9900035	19990311	20190311	PW9844-WHT,BLUE,RED/CW9844-PURPLE,BLUE,RED	PLANET EARTH IMPORTS INC.	N
COP9900036	19990311	20190311	DANCING POINSETTIA	MASTER TOYS & NOVELTIES, INC.	N
COP9900037	19990317	20190317	FURBY (WITH MANE)	TIGER ELECTRONICS, LTD.	N
COP9900038	19990317	20190317	R/C BMW Z3 (PINK)	TACK CHEUNG CORPORATION	N
COP9900039	19990317	20190317	R/C MUSTANG (PINK)	TACK CHEUNG CORPORATION	N
COP9900040	19990317	20190317	METAL MASTER MUSTANG COBRA	TACK CHEUNG CORPORATION	N
COP9900041	19990317	20190317	PAVEMENT POUNDER-FORD	TACK CHEUNG CORPORATION	N
COP9900042	19990317	20190317	BIG WHEELS-FORD MUSTANG	TACK CHEUNG CORPORATION	N
COP9900043	19990317	20190317	MONSTER MANIA-FORD F-150 PICK UP	TACK CHEUNG CORPORATION	N
COP9900044	19990317	20190317	R/C TOYOTA RAV4	TACK CHEUNG CORPORATION	N
COP9900045	19990317	20190317	FURBISH ENGLISH DICTIONARY	TIGER ELECTRONICS, LTD.	N
COP9900046	19990317	20190317	ANIMAL UMBRELLA SERIES/FANCIFUL UMBRELLA DESIGNS	ZM INTERNATIONAL INC.	N
COP9900047	19990331	20190331	HOBERMAN MINI SPHERE	CHARLES HOBERMAN	N
COP9900048	19990331	20190331	HOBERMAN SPHERE	CHARLES HOBERMAN	N
COP9900049	19990331	20190331	ACORN POT SCULPTURE	SEIBERT & RICE, INC.	N
COP9900050	19990331	20190331	MYSTIC KNIGHTS OF TIR NA NOG - STYLE GUIDE	SABAN INTERNATIONAL INC.	N
SUBTOTAL RECORDATION TYPE			31		
TMK9900078	19990302	20060618	THE GUSTBUSTER	INNOVENTIONS ENTERPRISES, LTD.	N
TMK9900079	19990302	20010813	SWAD BEST TASTE IN TOWN	M & N GROCERS, INC.	N
TMK9900080	19990302	20070715	E L G & SWAD BEST TASTE IN TOWN DESIGN	M & N GROCERS, INC.	N
TMK9900081	19990303	20030703	MAYA	LADEX CORPORATION	N
TMK9900082	19990303	20081014	CONCORD	MOVADO GROUP INC.	N
TMK9900083	19990303	20060806	BEBE MODA	BEBE STORES INC.	N
TMK9900084	19990303	20060109	BEBE	BEBE STORES INC.	N
TMK9900085	19990303	20010730	BEBE (STYLIZED)	BEBE STORES INC.	N
TMK9900086	19990303	20060723	BEBE	BEBE STORES INC.	N
TMK9900087	19990303	20090119	COMFORT GRIP	COMFORT GRIP SYSTEMS LLC	N
TMK9900088	19990303	20081201	LYCONITE	ODYSSEY GOLF	N
TMK9900089	19990303	20070916	MISCELLANEOUS DESIGN	KAL KAN FOODS INC.	N
TMK9900090	19990303	20070415	MISCELLANEOUS DESIGN	KAL KAN FOODS INC.	N
TMK9900091	19990303	20070923	SHEBA & DESIGN	KAL KAN FOODS INC.	N
TMK9900092	19990304	20090123	PETER RABBIT	FREDERICK WARNE & COMPANY, INC.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK9900093	19990304	20060924	MOSSY OAK	HAAS OUTDOORS, INC.	N
TMK9900094	19990304	20070819	WCW MONDAY NITRO	WORLD CHAMPIONSHIP WRESTLING, IN	N
TMK9900095	19990304	20080825	IV HORSEMEN	WORLD CHAMPIONSHIP WRESTLING, IN	N
TMK9900096	19990304	20080825	IV HORSEMEN	WORLD CHAMPIONSHIP WRESTLING	N
TMK9900097	19990304	20030522	GUCCI	GUCCI AMERICA, INC.	N
TMK9900098	19990304	20050919	DOUBLE G DESIGN	GUCCI AMERICA, INC.	N
TMK9900099	19990304	20051003	DOUBLE G DESIGN	GUCCI AMERICA, INC.	N
TMK9900100	19990304	20060730	DOUBLE G DESIGN	GUCCI AMERICA, INC.	Y
TMK9900101	19990304	19991212	SPEED	SWANSON TOOL CO., INC.	N
TMK9900102	19990304	19991226	SWANSON MAG	SWANSON TOOL CO., INC.	N
TMK9900103	19990304	20030928	SWANSON	SWANSON TOOL CO., INC.	N
TMK9900104	19990304	20060218	SPEEDLITE	SWANSON TOOL CO., INC.	N
TMK9900105	19990304	20050402	BIG 12	SWANSON TOOL CO., INC.	N
TMK9900106	19990304	20050205	SWANSON TOOL CO., INC., INC. & SPEEDLINE & DESIGN	SWANSON TOOL CO., INC.	N
TMK9900107	19990304	20070311	SPEED LINE	SWANSON TOOL CO., INC.	N
TMK9900108	19990304	20011229	SWANSON SPEED	SWANSON TOOL CO., INC.	N
TMK9900109	19990304	20070211	HALF HORSEBIT DESIGN	GUCCI AMERICA, INC.	N
TMK9900110	19990304	20070311	SQUARE G DESIGN	GUCCI AMERICA, INC.	N
TMK9900111	19990304	20060225	WEAR WOLF	WEAR WOLF GROUP, LTD.	N
TMK9900112	19990304	20081222	BATTERY PACK CONFIGURATION	HOTRONIC INTERNATIONAL LIMITED	N
TMK9900113	19990304	20071105	SHERWOOD	INKEL (USA) CORPORATION	N
TMK9900114	19990304	20000925	TARGA	INKEL (USA) CORPORATION	N
TMK9900115	19990305	20060506	PROFOTO	MAMIYA AMERICA CORPORATION	N
TMK9900116	19990305	20080905	VERBATIM	VERBATIM CORPORATION	Y
TMK9900117	19990305	20090105	GEAR FOR SPORTS AND DESIGN	GFSI, INC.	Y
TMK9900118	19990305	20090117	GEAR FOR SPORTS	GFSI, INC.	Y
TMK9900119	19990311	20080825	CHEMLAM ULTRA	CHEMFAB CORPORATION	N
TMK9900120	19990311	20081208	HRC	HAL ROACH CONSTRUCTION INC.	N
TMK9900121	19990311	20081006	YANG CHENG BRAND AND DESIGN	GUANGDONG MEDICINES & HEALTH	N
TMK9900122	19990316	20020421	AUTO METER	AUTO METER PRODUCTS INC.	N
TMK9900123	19990316	20021117	AUTO METER COMPETITION INSTRUMENTS AND DESIGN	AUTO METER PRODUCTS INC.	N
TMK9900124	19990316	20050905	AMI	AUTO METER PRODUCTS INC.	N
TMK9900125	19990316	20050124	PHANTOM	AUTO METER PRODUCTS INC.	N
TMK9900126	19990316	20060416	ULTRA-LITE	AUTO METER PRODUCTS INC.	N
TMK9900127	19990316	20080726	AUTO GAGE	AUTO METER PRODUCTS INC.	N
TMK9900128	19990317	20050523	ASUS	ASUSTEK COMPUTER INCORPORATION	N
TMK9900129	19990317	20090202	LUCKY ROSE (FLOWER DESIGN)	LIEN HOA FOOD CORPORATION	N
TMK9900130	19990317	20081117	STIKKO	TAKARI INTERNATIONAL, INC.	N
TMK9900131	19990323	20070520	VALSI	GRUPO VALSI S.A. DE C.V.	N
TMK9900132	19990324	20030504	WAT	WATEC AMERICA CORPORATION	Y
TMK9900133	19990324	20020915	WATEC	WATEC AMERICA CORPORATION	Y
TMK9900134	19990324	20081011	BASS	PHILLIPS-VAN HEUSEN CORPORATION	N
TMK9900135	19990324	20010514	BRUNTON	THE BRUNTON CO.	N
TMK9900136	19990330	20081110	TOLEDO TORCH	FISHER BARTON INC.	N
TMK9900137	19990330	20070930	CIDCO	CIDCO INCORPORATED	N
TMK9900138	19990331	20090331	TOMAHAWK & DESIGN	JAMES REICHMAN	N

SUBTOTAL RECORDATION TYPE 61

PROPOSED COLLECTION; COMMENT REQUEST

MASTER'S OATH OF VESSEL IN FOREIGN TRADE

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Master's Oath of Vessel in Foreign Trade. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Master's Oath of Vessel in Foreign Trade
OMB Number: 1515–0060
Form Number: Customs Form 1300
Abstract: CF–1300 is used by the master of a vessel to attest to the truthfulness of all other forms associated with the manifest. The form also serves to record information on the tonnage tax to prevent overpayment of that tax.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Business or other for-profit institutions
Estimated Number of Respondents: 12,000
Estimated Time Per Respondent: 5 minutes
Estimated Total Annual Burden Hours: 21,991
Estimated Annualized Cost to the Public: $285,820

Dated: April 5, 1999.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, April 15, 1999 (64 FR 18657)]

PROPOSED COLLECTION; COMMENT REQUEST

ENTRY SUMMARY AND CONTINUATION SHEET

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry Summary and Continuation Sheet. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar

Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry Summary and Continuation Sheet

OMB Number: 1515–0065

Form Number: Customs Form 7501, 7501A

Abstract: Customs Form 7501 is used by Customs as a record of the impact transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondent: 14,926,364

Estimated Time Per Respondent: 20 minutes

Estimated Total Annual Burden Hours: 4,970,479

Estimated Annualized Cost to the Public: $101,890,506

Dated: April 5, 1999.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, April 15, 1999 (64 FR 18656)]

PROPOSED COLLECTION; COMMENT REQUEST

REPORT OF DIVERSION

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Report of Diversion. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Report of Diversion

OMB Number: 1515–0071

Form Number: Customs form 25

Abstract: Customs uses CF 26 to track vessels traveling coastwise from U.S ports to other U.S. ports when a change occurs in scheduled itineraries. This is required for enforcement of the Jones Act (46 U.S.C. App. 883) and for continuity of vessel manifest information and permits to proceed actions.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 7,500
Estimated Time Per Respondent: 5 minutes
Estimated Total Annual Burden Hours: 1,250
Estimated Total Annualized Cost on the Public: N/A

Dated: April 5, 1999.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, April 15, 1999 (64 FR 18656)]

PROPOSED COLLECTION: COMMENT REQUEST

CARGO DECLARATION AND CARGO DECLARATION (OUTWARD WITH COMMERCIAL FORMS)

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Cargo Declaration and Cargo Declaration (Outward With Commercial Forms). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pur-

suant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Cargo Declaration

OMB Number: 1515–0078

Form Number: CF 1302 and 1302A

Abstract: This information collection is used by Customs for the control of cargo and pre-selectivity targeting of cargo for enforcement purposes. Customs Forms 1302 and 1302A are used by the master of a vessel to list all inward cargo onboard and for the clearance of all cargo onboard with commercial forms.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 140,000

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 11,662

Estimated Annualized Cost to the Public: $171,000

Dated: April 5, 1999.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, April 15, 1999 (64 FR 18654)]

PROPOSED COLLECTION; COMMENT REQUEST

REQUEST FOR TEMPORARY IDENTIFICATION CARD

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Request for Temporary Identification Card. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Request for Temporary Identification Card

OMB Number: 1515–0128

Form Number: N/A

Abstract: Cartmen, Lightermen, and airport employers may request a temporary identification card to be issued to their employees if they

can show that a hardship to their business would result pending the issuance of a permanent identification card.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)
Affected Public: Business or other for-profit institutions
Estimated Number of Respondents: 150
Estimated Time Per Respondent: 30 minutes
Estimated Total Annual Burden Hours: 300
Estimated Total Annualized Cost on the Public: N/A

Dated: April 5, 1999.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, April 15, 1999 (64 FR 18655)]

PROPOSED COLLECTION; COMMENT REQUEST

LINE RELEASE REGULATIONS

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Line Release Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pur-

suant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Line Release Regulations

OMB Number: 1515–0181

Form Number: N/A

Abstract: Line release was developed to release and track high volume and repetitive shipments using bar code technology and PCS. An application is submitted to Customs by the filer and a common commodity classification code (C4) is assigned to the application.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 25,700

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 6,425

Estimated Total Annualized Cost on the Public: N/A

Dated: April 5, 1999.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, April 15, 1999 (64 FR 18654)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 14, 1999.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN DURANT,
(for Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF AN "EYEBALL" STRAW

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of an "eyeball" straw.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of an "eyeball" straw and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before May 28, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, General Classification Branch, (202) 927–3315.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of an "eyeball" straw. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) B87341 dated July 22, 1997, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY B87341, issued July 22, 1997, Customs ruled that the "eyeball" straw was classified in subheading 3917.32.60, HTSUS, which provides

for "* * * [o]ther tubes, pipes and hoses and fittings therefor, of plastics, not reinforced or otherwise combined with other materials, without fittings * * * [o]ther." The "eyeball" straw is a straw which is twirled and which has securely fitted to it a plastic eyeball contained within a plastic eyeball socket. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that it is in error. The "eyeball" part of the article was not given consideration as it was in NY A85583 dated July 19, 1996, on a similiar, but not identical, type of "eyeball" straw. NY A85583 is set forth as "Attachment B" to this document. We have determined that this particular style of "eyeball" straw is properly classified in subheading 9503.90.00, HTSUS, as "* * * [o]ther toys and models, [o]ther."

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY B87341, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 962595 (*see* "Attachment C" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 12, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, July 22, 1997.

CLA-2-39:RR:NC:2:221 B87341
Category: Classification
Tariff No. 3917.32.6010,
3917.32.6020, and 3917.32.6050

MS. ROSE BELTRAN
ALLIANCE CUSTOMS CLEARANCE INC.
100 Oceangate, Plaza 200
Long Beach, CA 90802

Re: The tariff classification of the Taco Bell Eyeball Straw from China.

DEAR MS. BELTRAN:

In your letter dated June 23, 1997, on behalf of PFS, you requested a tariff classification ruling.

A sample of the eyeball straw was submitted with your letter. The straw, which is composed of an unspecified plastics material, is twirled. The plastic eyeball is securely fitted

within a plastic eye socket, which in turn is securely fitted to the straw. The straw is functional. The eyeball straw will be distributed in Taco Bell restaurants as a promotional item.

The applicable subheading for the eyeball straw will be subheading 3917.32.60, HTS, which provides for other tubes, pipes and hoses, not reinforced or otherwise combined with other materials, without fittings. The ninth and tenth digits of the subheading are dependent on the type of plastic used. They would be 10, 20 or 50 depending on whether the plastic was polyvinyl chloride, polyethylene or another plastic. Plastic straws so classified are subject to a general rate of duty of 3.1 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 212–466–5580.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, July 19, 1996.

CLA–2–39:RR:NC:TP:221 A85583
Category: Classification
Tariff No. 3917.32.6010, 3917.32.6020,
3917.32.6050, and 9503.90.0030

MR. R. BELTRAN
ALLIANCE CUSTOMS CLEARANCE, INC.
100 Oceangate, P–200
Long Beach, CA 90802

Re: The tariff classification of the "Taco Bell Eyeball Straw Toy" from China.

DEAR MR. BELTRAN:

In your letter dated July 2, 1996, on behalf of PFS, A Division of PepsiCo., Inc., you requested a tariff classification ruling.

A sample of the eyeball straw toy was submitted with your letter. The straw, which is composed of an unspecified plastics material, is twirled. The plastic eyeball is fitted within the twirled section of the straw, and can be easily removed. The straw is functional. The eyeball straw toy will be sold in Taco Bell restaurants as a promotional item. The straw and eyeball will be classified separately.

The applicable subheading for the plastic eyeball will be 9503.90.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for toys, other. The rate of duty will be free.

The applicable provision for the plastic straw will be in subheading 3917.32.60, HTS, which provides for other tubes, pipes and hoses, not reinforced or otherwise combined with other materials, without fittings. The ninth and tenth digits of the subheading are dependent on the type of plastic used. They would be 10, 20 or 50 depending on whether the plastic was polyvinyl chloride, polyethylene or another plastic. Plastic straws so classified are subject to a general rate of duty of 3.1 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 212–466–5580.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 962595 JRS
Category: Classification
Tariff No. 9503.90.0045

MS. ROSE BELTRAN
ALLIANCE CUSTOMS CLEARANCE INC.
100 Oceangate, Plaza 200
Long Beach, CA 90802

Re: "Monster Eye" Assortment straws; Revocation of NY B87341; NY A85583 affirmed.

DEAR MS. BELTRAN:

On July 22, 1997, Customs issued New York Ruling Letter (NY) B87341 to your company on behalf of TRSG, Inc. (formerly PFS, a Division of PepsiCo, Inc.) regarding the tariff classification of the "Taco Bell Eyeball Straw." The straw sample was classified under subheading 3917.32.60 of the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed that ruling and determined that the classification provided is not correct. Therefore, NY B87341 is revoked.

Samples of the "Monster Eye Assortment" (Item No. 53095) were submitted for our examination. We also examined a similar but not identical "Taco Bell Eyeball Straw" ruled upon in NY A85583, dated July 19, 1996.

Facts:

The merchandise is identified as the "Taco Bell Eyeball Straw." The "Monster Eye Assortment" (Item No. 53095) consists of six different colors and designs of plastic eyeballs and straws. All the plastic straws are twirled or looped around a securely attached plastic eye "socket" which is located near the upper portion of all the straws. The eye socket is fitted with a "floating eyeball" which is easily removable from the socket. The plastic eyeball "socket" is a holder designed with "veins" and "lashes" to represent both an eye socket and eyelid. The "floating eyeball" is a 1½" diameter clear ball that has an inner ball of an "eyeball" with a balance weight and glow-in-the-dark properties and it is filled with a clear liquid (presumably water).

Each eyeball straw is packaged in an individual plastic bag. On the front of the plastic bag is the name of the particular "Monster Eye Assortment" straw contained therein. The name of the toy portion (i.e., "Alien Eye," "Nasty Eye," "Shattered Eye," "Serpent Eye," "Brain Eye," and "Monster Eye") is written in colored lettering at the top of the package in large type. The plastic packaging also contains consumer product safety information, i.e., "Recommended for children ages 3 and up." On the back of the bag is a drawing or diagram of the item demonstrating how the eyeball can be easily removed from the socket. Written on the back of the bag is a recommendation, in English and French, to pop the eyeball out of the eye socket "for extra fun." In addition, the following recommendation appears at the bottom of the bag in bold typeface: "Hand wash before and after each use, not dishwasher safe."

Each straw measures approximately 13½ inches in height, which is larger than the 8 inch straws ordinarily available. The straw is functional in the abstract. The "eyeball" straw is a Halloween promotional item for the "fast food" restaurant.

Issue:

Whether the "Monster Eye Assortment" is classifiable as drinking straws under heading 3917, HTSUS, or as toys under heading 9503 for tariff purposes.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *." In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The following headings are relevant to the classification of this merchandise:

3917	[t]ubes, pipes and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics
9503	[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

Chapter 39 of the HTSUS provides for plastics and articles thereof and Chapter 95 covers toys, games and sports equipment and part and accessories thereof. Chapter Note 2 (v) to Chapter 39 states that this chapter does not cover: "[a]rticles of [c]hapter 95 (for example, toys, games, sports equipment)." We must determine whether the "eyeball" straw as an article is classifiable as a toy for tariff purposes. If so, it is excluded from classification in heading 3917 by operation of Note 2(v) to Chapter 39.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The term "toy" is not defined in the tariff. The ENs to Chapter 95 state, in pertinent part, that "[t]his chapter covers toys of all kinds whether designed for the amusement of children or adults." Although not set forth as a definition of "toys," we have interpreted the just-quoted passage from the ENs as equating "toys" with articles "designed for the amusement of children or adults," although we believe such design must be corroborated by evidence of the articles' principal use.

There is no disagreement that the "Monster Eye" portion of the article by itself is a toy. We note that an identical plastic "eyeball" (except for it possessing no glow-in-the-dark properties) was classified as "other toys" under subheading 9503.90.00, HTSUS in NY A85583, dated July 19, 1996. The question is whether incorporating the "Monster Eye" with this particular design of straw with a plastic eye socket/holder is a toy in its own right, or rather is a toy with a novelty straw as in NY A85583. We must examine the use of this article to determine whether the entire article is properly a toy. *See* HQ 959784, dated March 25, 1997. To be classified as a toy, the "Monster Eye" Assortment would need to be principally used for amusement. When an article has the potential for both amusement and utility, the question of determining whether it is converted to a toy becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purposes are incidental to the amusement. *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, C.D. 4688 (1977).

The use of the "eyeball" straw of NY B87341 as a drinking straw is severely limited by its physical characteristics, that is, its shape (design/structure), its height or size, and most particularly, its weight. The design of the "eyeball" straw depends upon the "eye socket" to complement the design of the eyeball. In the socket, the eyeball fits snugly while its contents (inner ball and liquid) are able to freely rotate and move. The eye socket is located within a twirled or looped section of the upper portion of the straw which makes the straw top-heavy or unstable even when the "eyeball" is removed. The eye socket is securely attached to the straw by a circular piece of plastic that is very inflexible. As such, it is removable from the straw only with great difficulty and not without damage to the straw while pulling it through the various loops, twists and turns. Once removed, the socket is extremely difficult to reattach. In comparison, the eyeball pops in and out of the socket easily but the socket is neither easily removed from the straw nor easily reattached. It is apparent from its structural design that the eye socket holder was not intended to be removed from the straw since it is in all practicality permanently affixed to the straw.

The "eyeball" straw measures 13½" in height. This is in contrast to the 8-inch drinking straws ordinarily available. The height of the "eyeball" straw makes its use as an ordinary straw more difficult since one needs to use a very large or weighty container (e.g., glass) to prevent it from falling over. The size of cup which would most likely be bought by parents for small children, "ages 3 and up," who are the target marketing group for this item is the small child-sized cup. We note the height of a 13½" straw is not feasible with the use of a child-sized beverage container.

In addition to the height, the straw's instability is also attributable to its design of having an eye socket holder affixed more than halfway up the shaft of the straw. The instability of the straw becomes further exaggerated when the weighty eyeball is inserted into the socket. The total weight of the "eyeball" straw, that is, the straw, socket and eyeball attached, is approximately 2.5 oz. When weighed separately, the eyeball toy is 1.9 oz, which is more than

three times the weight of the straw with the eye socket. The ordinary drinking straw is very lightweight and does not even register on a digital postal scale which weighs in tenths of an ounce.

We tested the "eyeball" straw with and without the "Monster Eye." The limitations of using this straw assortment as drinking straws were evident when we attempted to use the straw with a few cups. Placing the straw **with** the eyeball inserted into the eye socket in an empty 16 oz., 20 oz., or 32 oz. size paper cup resulted in the cups tipping over from the height, weight and structure of the item. Placing the same straw in filled 16 and 20 oz. cups of the same size required that one hold the straw upright while drinking through it and carefully removing it from the cup between sips to prevent spills. Although the 32 oz. cup was somewhat easier, one was required to exercise care, particularly at the point when the beverage toward the bottom of the cup was consumed. The spilling of beverages is not a desired result in using a straw.

The straw even **without** the eyeball attached is severely restricted functionally due to its cumbersome design of an essentially fixed eye socket holder. Using the "eyeball" straw as a straw with the eyeball removed from the socket in an empty 16 oz. or 20 oz. size cup still caused the cup to fall over; in an empty 32 oz. cup, unless it was carefully balanced in the cup, the straw still caused the cup to fall over. Using the straw with only the empty eye socket in a filled cup of all three sizes was possible, but care was required to prevent spills, particularly at the point when the beverage toward the bottom of the cup was being consumed.

It is noted that the size of cups used above (16, 20 and 32 ounces) are not the size of containers likely to be used by young children who are among the intended users of the "Monster Eye" Assortment. The "kids' meal" cups are smaller in size. It is easy to picture a child's parent, upon examining the weight of the item, not allowing the item's use in a beverage cup in order to prevent messy spills. Customs is of the opinion that the "eyeball" straw's utilitarian use as a straw has definite limitations for general use due to its weight, height, and awkward design, even without the eyeball inserted, and its associated spilling problems.

What sets the "Monster Eye" Assortment apart from a novelty straw is not just its weight and size, but the fact that it invites one to play with it. We observed two children with the "Monster Eye" Assortment. The following observations demonstrate that the "Monster Eye" assortment was designed primarily for the amusement of children rather than for the purpose of providing a decorative means of sipping beverages:

—it is fun for a child to pop out the brightly colored and creepy eyeball from its socket and to roll it across a table or floor;

—it is fun to watch the eyeball watching you as it rolls across the table or floor (the eye is designed to continuously look "up" as it rolls across a surface);

—it is fun to spin the eyeball in place and watch it spinning;

—it is fun to shake the eyeball around and look at it "float" in the liquid contained inside the eyeball;

—it is fun to look at the scary or gory designs and to compare the six different ghoulish designs to each other;

—it is fun to see how the eyeball looks in the socket with its "veins" and "lashes;"

—it is fun to insert the eyeball back into the colorful socket and see the eyeball watching you through the various placed "holes" in the socket, no matter which way you hold or turn the straw;

—it is fun to spin or twirl the straw around in order to cause the eyeball to "float" and spin around in the socket;

—it is fun to see the eye portion of the eyeball glow in the dark;

—it is fun to spin, twirl or wave the straw about in the dark and watch the spinning or streaking glow of the glow-in-the-dark eye as it moves about inside the socket.

Based on the features listed above, the "eyeball" straw has an overwhelming attraction as a play object and the straw acts as a delivery device for holding a large and heavy "eyeball" toy which adds to its play function as a wand or handle. The children, immediately upon receiving the item, started to take it apart and play with it as discussed above without ever trying to drink through the straw. Due to its great appeal as an article of amusement and the marketing of the article as such by the "fast food" restaurant for its Halloween program and its limitations as a usable straw, the article is bought primarily because of its play value and not because it has a utilitarian purpose. The use of the straw as a means of sipping beverages is limited by its height, weight and overall design. We find that the over-

whelming attraction as a play article outweighs its limited utilitarian function. The appeal of the article comes from the various play aspects it affords and not from the fact that it may have some use as a straw. The appeal of the "Monster Eye" Assortment is that of a toy, an article of amusement.

We note that the retail packaging does show suggested age proscriptions that typically appear on retail packaging for toys containing small items. Also, the design and cost of the "eyeball" straw is evidence that the article was not intended for utilitarian use. One would not construct a utilitarian straw with a costly balance weight (that is, the "eyeball" is six times the cost of the straw and six times the cost of the socket) for a decorative ornament since the weight of the eyeball and socket take away from its functionality as a straw.

In NY A85583, issued July 19, 1996, Customs ruled upon a similar but not identical floating eyeball with a plastic straw approximately 11½ inches in height. The "floating eyeball" is a 1½" diameter clear ball that has an inner ball of an "eyeball" with a balance weight and is filled with a clear liquid (presumably water). Customs held in NY A85583 that the "eyeball," which was fitted within the twirled section of the straw, was separately classified under subheading 9503.90.0030, HTSUS, as a toy and the drinking straw itself was separately classified under subheading 3917.32.60, HTSUS, as an other tubes, pipes and hoses.

NY A85583 is correct as applied to that particular design of an "eyeball" straw. Customs found that the straw and eyeball were not a composite good as the "eyeball" was easily removed from the twirled section of the straw and the "eyeball" could be purchased separately from the straw. The straw of NY A85583 functions independently from the "eyeball" toy as an ordinary drinking straw and its use is not restricted by either the removable "eyeball" or the awkward eye "socket" attachment of NY B87341. After the "eyeball" is initially removed from the straw by a child, it is unlikely that the toy would be replaced within the twirled section of the straw for two reasons. First, the "eyeball" weighs down the straw and negatively impacts on the straw's functionality as a usable straw (i.e., the straw with the "eyeball" tips over a paper or plastic "fast food" beverage cup quite easily when the straw is not held). Secondly, the straw does not directly impact upon the play value of the "eyeball." For instance, a child would be absorbed in play by rolling the "eyeball" across the table to observe that the "eyeball" always remains looking "up" and abandon the straw altogether. NY A85583 is affirmed as the "eyeball straw" was properly classified as two distinct articles, a toy and a straw.

By contrast, the play value of the "eyeball" straw toy in NY B87341 is very dependent upon the straw's design. The difference between NY A85583 and NY B87341 is that when the "eyeball" is removed from the socket holder of the "Monster Eye" straw, it is very likely that the child will replace the "eyeball" back into the socket holder attached to the straw. The "Monster Eye" straws of NY B87341 function as attractive holders for the "eyeball" toy and as a means of carrying around the "eyeball" for "scary" display and fun.

Based upon NY A85583, Customs erred in failing to consider the "eyeball" portion of the "Monster Eye" straw in NY B87341. As such, NY B87341 is revoked to reflect the proper classification of the "Monster Eye" Assortment design as a toy under GRI 1. The article is specifically described in heading 9503 and as such is not properly classified under Chapter 39. *See* Note 2(v) to Chapter 39.

Holding:

Under GRI 1, the "Monster Eye" assortment straws are classified as eyeball "toys" under subheading 9503.90.0045, HTSUS, the provision for "* * * other toys and models," with a free rate of duty.

NY B87341 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SPECULAR MICROSCOPE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to tariff classification of specular microscope.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of a specular microscope under the Harmonized Tariff Schedule of the United States (HTSUS), and any treatment previously accorded by Customs to substantially identical transactions.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Gail A. Hamill, General Classification Branch (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title Vl, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), notice of the proposed revocation of HQ 958579 was published on March 10, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 10. No comments were received in response to the notice.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking a ruling let-

ter pertaining to the tariff classification of a specular microscope. Although in this notice Customs is specifically referring to one ruling, HQ 958579, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In HQ 958579, dated February 13, 1996, Customs classified Konan Medical's Noncon ROBO specular microscope under subheading 9018.50.0000, Harmonized Tariff Schedule of the United States Annotated, HTSUSA, as other ophthalmic apparatus. The merchandise has a single stage of optics and was designed for eye examination and photography. It has an adjustable chin rest for the patient and a viewing screen for the doctor. The microscope has a computerized system for analytical computations, and a photographic capability for imaging a patient's corneal endothelium. The microscope enables a wide field photography and a contact scanning of the cone lens on the cornea, with more precise examination possible.

It is now Customs position that the specular microscope described above is properly classified under subheading 9018.19.9550, HTSUSA, as electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof, other, other, other, other apparatus.

Customs is revoking HQ 958579, and any other ruling not specifically identified, in order to classify this merchandise under subheading 9018.19.9550, HTSUSA. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the

Customs Service to substantially identical transactions. HQ 962596, revoking HQ 958579, is set forth as the "Attachment" to this document.

Dated: April 13, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, April 13, 1999.

CLA–2 RR:CR:GC 962596 gah
Category: Classification
Tariff No. 9018.19.9550

BIO OPTICS, INC.
1525 NE 41st Avenue
Portland, OR 97232

Re: Revocation of classification principle set forth in HQ 958579; specular microscope, heading 9018.

DEAR SIR OR MADAM:

This is in regard to HQ ruling (HQ) 958579 that was issued to you on February 13, 1996, which decided protest 0401–95–100544 at the port of Boston and addressed the tariff classification of a specular microscope under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling in light of a matter currently before us on identical merchandise and have determined that HQ 958579 is incorrect. Therefore, this ruling revokes HQ 958579 and sets forth the correct classification for the specular microscope. This action has no effect upon the decision in protest 0401–95–100544.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), notice of the proposed revocation of HQ 962596 was published on March 10, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 10. No comments were received in response to the notice.

Facts:

The merchandise is Konan Medical's Noncon ROBO specular microscope produced in Japan. It has a single stage of optics and is designed for eye examination and photography. It has an adjustable chin rest for the patient and a viewing screen for the doctor. The microscope has a computerized system for analytical computations, and a photographic capability for imaging a patient's corneal endothelium. The microscope enables a wide field photography and a contact scanning of the cone lens on the cornea. After screening with the contact microscope, more precise examination is possible.

More specifically, the merchandise is a non-contact endothelial microscope which measures the corneal endothelium and corneal thickness of a patient's eye. The microscope works by fixing a position on the cornea, taking a picture (image) of the section of interest and displaying the measurement on a built-in monitor. The image can be magnified through manipulation of the mouse. Corneal cells can be identified, marked on the monitor screen, and analyzed. The cell information is displayed on the monitor, and provides reference values for the status of the endothelium. The endothelium is a layer of cells in the back of the cornea. 6 McGraw-Hill Encyclopedia of Science and Technology 5842 (1992). This layer of cells is examined for the presence of deterioration. The merchandise at issue is not used in surgery.

Customs decided the protest by classifying the microscope in subheading 9018.50.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other ophthalmic instruments and appliances, and parts and accessories thereof.

Issue:

Is the merchandise properly classified as electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters), in subheading 9018.19, HTSUS, or other ophthalmic instruments and appliances, in subheading 9018.50, HTSUS? If the microscope is electro-diagnostic apparatus, is it for functional exploratory examination?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is in accordance with the General Rules of Interpretation (GRI). GRI I provides that classification shall be determined according to the rules of the headings and any relative section or chapter notes, taken in order. Merchandise that cannot be classified in accordance with GRI I is to be classified in accordance with subsequent GRI.

Heading 9018, HTSUS, provides for instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments. The microscope is used in medical, surgical, dental or veterinary sciences. It has a single objective lens, and thus provides one stage of magnification. The microscope is therefore classifiable within this heading. It is not a compound optical microscope, and therefore does not meet the terms of heading 9011, HTSUS.

GRI 6 states, in summary, that classification at the subheading level is determined according to the terms of the subheadings, on the understanding that only subheadings at the same level are comparable, The applicable competing subheadings within heading 9018 are:

> Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters)

and

> Other ophthalmic instruments and appliances

A diagnosis is the identification of a disease by careful investigation of its symptoms and history. 1 Compact Edition of the Oxford English Dictionary 714 (1987). The microscope is designed for eye examination, scanning and photography. It is used in the visual investigation and measurement of the physical structure of the endothelial cells of the cornea to diagnose corneal edema (swelling) or other disease or trauma. It therefore is accurately described as electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters), in subheading 9018.19, HTSUS.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989).

The Explanatory Notes (EN) for heading 9018 lists three categories of ophthalmic instruments: surgical, diagnostic and orthoptic or sight testing apparatus. This is an indication that the drafters of the EN believed that diagnostic apparatus are an identifiable category of ophthalmic instruments. Subheading 9018.50 describes *other* ophthalmic instruments and appliances. Thus, *other* ophthalmic instruments and apparatus in subheading 9018.50 can include only ophthalmic apparatus which are other than those provided for at the same subheading level in heading 9018, including an ophthalmic instrument or apparatus which is an electro-diagnostic apparatus, within subheading 9018.11 through 9018.19.

Within subheading 9018.19, the competing provisions for consideration are subheading 9018.19.40, apparatus for functional exploratory examination and subheading 9018.19.95, other apparatus.

Functional in the medical sense means that which relates to the normal physiological activity of an organ, but not the structure, or anatomy, of that organ. *See Dorland's Illustrated Medical Dictionary* 667 (1994). The instant specular microscope permits the operator to observe and record the structure of the eye, but not the activity going on in the eye. It

measures the parameters of endothelial cells. The goods do not meet the definition of *functional*.

Exploratory in the medical sense means that which relates to an active examination, usually involving endoscopy or a surgical procedure, to ascertain conditions present as an aid in diagnosis. *Stedman's Medical dictionary* 550 (1990). While the instant specular microscope certainly aids in describing the condition of the eye, it does so through visual examination from outside the body cavity, that is, without invasive procedures. We do not believe the goods are *exploratory* in nature.

The specular microscope is specifically described as electro-diagnostic apparatus for other than functional exploratory examinations.'

Holding:

The Noncon ROBO specular microscope is properly classified in subheading 9018.19.9550, HTSUSA, as electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof, other, other, other, other apparatus.

HQ 962596 dated February 13, 1996, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become affective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF "SOBAKAWA™ PILLOW" FLAX SEED EYE MASK

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to tariff classification of "SOBAKAWA™ pillow" flax seed eye mask.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling and any treatment previously accorded by Customs to substantially identical transactions, pertaining to the tariff classification of the "Sobakawa™ pillow" flax seed eye mask, under the Harmonized Tariff Schedule of the United States (HTSUS).

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michael McManus, General Classification Branch, Office of Regulations and Rulings (202) 927–2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In Volume 32, Number 46 of the CUSTOMS BULLETIN, published on November 18, 1998, Customs stated its intention to revoke NY B86429, dated June 23, 1997, which classified the "SOBAKAWA™ PILLOW" flax seed eye mask in subheading 3005.90.50, HTSUS, the residual provision for wadding, gauze, bandages and similar articles, and classify this merchandise in subheading 1204.00.00, HTSUS, as flaxseed. Upon further review and consideration of this matter, we determined that this merchandise is not properly classified in subheading 1204.00.00, HTSUS. In Volume 33, Number 8/9 of the CUSTOMS BULLETIN, published on March 3, 1999, Customs stated its intention to revoke NY B86429 and classify the "SOBAKAWA™ PILLOW" flax seed eye mask in subheading 1404.90.00, HTSUS, as a vegetable product not elsewhere specified or included. No comments were received in response to that notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY B86429 to reflect the proper classification of the "SOBAKAWA™ Pillow" flax seed eye mask. HQ 962310, revoking NYB86429, is set forth as the Attachment to this document. This notice covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance

on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Dated: April 13, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, April 13, 1999.
CLA–2 RR:CR:GC 962310 MGM
Category: Classification
Tariff No. 1404.90.00

MS. CECILIA CASTELLANOS
EXECUTIVE VICE PRESIDENT
WESTERN OVERSEAS CORPORATION
P.O. Box 90099
Long Beach, CA 90809–0099

Re: "SOBAKAWA™ Pillow" Flax Seed Eye Mask; Revocation of NY B86429.

DEAR MS. CASTELLANOS:

This office has determined that New York Ruling Letter (NY) B86429, issued to you on June 23, 1997, in response to your letter of June 12, 1997, on behalf of Yanko Herb, Incorporated, requesting a ruling regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the "SOBAKAWA™ Pillow" flax seed eye mask is in error. NY B86429 classified the "SOBAKAWA™ Pillow" flax seed eye mask in subheading 3005.90.50, HTSUS, the residual provision for wadding, gauze, bandages and similar articles. This ruling revokes NY B86429 and sets forth the correct classification of the "SOBAKAWA™ Pillow" flax seed eye mask.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was promulgated in Volume 32, Number 46 of the CUSTOMS BULLETIN, published on November 18, 1998. In that notice Customs stated its intention to revoke NY B86429 and classify this merchandise in subheading 1204.00.00, HTSUS, as flaxseed. Upon further review and consideration of this matter, we determined that this merchandise is not properly classified in subheading 1204.00.00, HTSUS. In Volume 33, Number 8/9 of the CUSTOMS BULLETIN, published on March 3, 1999, Customs stated its intention to revoke NY B86429 and classify the "SOBAKAWA™ Pillow" flax seed eye mask in subheading 1404.90.00, HTSUS, as a vegetable product not elsewhere specified or included. No comments were received in response to this notice.

Facts:

The "SOBAKAWA™ Pillow" consists of a small, sealed pouch, which is constructed from woven fabric and filled with flax seeds (7.5 oz.). According to the instructions on the insert,

the individual, after lying down or reclining, places the pouch, mask-like, across the bridge of the nose and over the eyes, in order to rest and soothe the eyes. It can also be chilled in a freezer prior to use. The product is put up for retail sale in a sealed polybag.

Issue:

What is the proper tariff classification of the "SOBAKAWA ™ Pillow" flax seed eye mask?

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Heading 3005, HTSUS, provides as follows:

> 3005 Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

Under the rule of *ejusdem generis*, the phrase "similar articles" is limited to goods which "possess the essential characteristics or purposes that unite the articles enumerated *eo nomine*." *Totes, Inc. v. U.S.*, 69 F.3d 495, 498 (Fed. Cir. 1995) (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390 (Fed. Cir. 1994)). The characteristic which unites the exemplars of this heading is their direct application to an ailing portion of the body. The "SOBAKAWA ™ Pillow" flax seed eye mask is not designed or marketed for such a purpose and is therefore not "a similar article." Furthermore, this heading is limited to items which are for "medical, surgical, dental or veterinary purposes." While the instant product does purport to soothe the eyes, such action does not amount to medical treatment of an ailment, thus it is not properly classified in heading 3005, HTSUS.

Neither does any other heading describe the "SOBAKAWA ™ Pillow" flax seed eye mask. Where goods cannot be classified according to GRI 1, the remaining GRIs are applied in order. GRI 2 (b) states that "any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances * * * The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 (b) states that goods which are *prima facie* classifiable under two or more headings and are made up of different components shall be classified as if they consisted of the material or component which gives them their essential character.

Factors which determine essential character may include bulk, quantity, weight, value, or the role of a constituent material in relation to the use of the goods. Explanatory Note VIII to GRI 3. Here, the flax seeds provide the greater part of the item's bulk and weight. In addition, they are understood to perform the primary soothing function. Thus, the essential character of the "SOBAKAWA ™ Pillow" flax seed eye mask is found in the flax seeds.

The Harmonized System Committee (HSC) of the World Customs Organization (formerly the Customs Co-operation Council) has issued a report regarding the classification of "certain substances or materials put up in certain forms for specific use, rather than general use" at its 22nd Session in November of 1998. HSC Nov. 98 42.444. The decisions found in this report indicate that where a composite article, put up for a specific use, is classified according to the material which imparts the essential character to the merchandise, the merchandise is to be classified as an *article* of the material rather than as the primary form of the material. The Committee Report further stated that "the Committee had not decided on a general principle which would cover the classification of *all* products put up in certain forms for specific uses." These decisions did not result in an amendment to the Explanatory Notes nor in the issuance of a classification opinion.

Decisions of the HSC are advice and guides to the interpretation of the Harmonized Schedule. The decisions are not binding, but Customs considers that they often provide valuable insight into how the HSC views certain provisions. Decisions which are merely given in the report are accorded relatively less weight than those decisions for which a classification opinion is issued and added to the Compendium of Classification Opinions or those decisions embodied as an amendment to the Explanatory Notes. *See,* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

There is no precedent which directly addresses classification of composite products put up for specific uses, however the Court of International Trade has decided the classification of a product somewhat analogous to the "Anti-Stress Eye Pillow." *Pillowtex Corp. v. U.S.*, 983 F.Supp 188 (C.I.T. 1997). In *Pillowtex*, the court classified comforters which consisted of an outer shell of woven cotton and stuffing of down. In choosing the appropriate subheading, the court considered classification as a "comforter of cotton" or as a comforter of "other" than cotton. The court referred to the principles of GRI 3 (b) in holding that it would be improper to classify the comforter as an "article of cotton" because its essential character was imparted by the down stuffing. Despite the down stuffing supplying the essential character, there is no mention of classification as down in its primary form. This suggests that the court views composite products for specific uses in a manner congruent with the HSC, that is, as articles of the material which imparts the essential character.

Thus it appears that the "SOBAKAWA™ Pillow" flax seed eye mask is to be classified as an article of the material from which it draws its essential character. As there is no provision in the HTSUS for "articles of flax seed," the "SOBAKAWA™ Pillow" flax seed eye mask falls in heading 1404, HTSUS, as a "Vegetable product not elsewhere specified or included."

Heading 1404, HTSUS, is not limited only to raw vegetable materials. HQ 959719, dated October 21, 1997, classified decorative stickers consisting of dried flowers vacuum sealed between discs of plastics with an adhesive coating on one side. It was held that the dried flowers provided the essential character of the article and it was therefore classified in heading 1404.90.00, HTSUS.

Holding:

The "SOBAKAWA™ Pillow" flax seed eye mask is classified in subheading 1404.90.00, HTSUS.

NY B86429 is REVOKED. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF HEATING AND COOLING PADS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letters and treatment relating to tariff classification of heating and cooling pads.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings pertaining to the tariff classification of heating and cooling pads and any treatment previously accorded by Customs to substantially identical transactions, under the Harmonized Tariff Schedule of the United States (HTSUS).

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michael McManus, General Classification Branch, Office of Regulations and Rulings (202) 927–2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In Volume 32, Number 48 of the CUSTOMS BULLETIN, published on December 2, 1998, Customs stated its intention to revoke NY A83830, dated May 31, 1996, which classified "PitPacs" heating and cooling

pads in subheading 3005.90.50, HTSUS, the residual provision for wadding, gauze, bandages and similar articles, and classify this merchandise in subheading 1212.99.00, HTSUS, as fruit stones. Upon further review and consideration of this matter, we determined that this merchandise is not properly classified in subheading 1212.99.00, HTSUS. In Volume 33, Number 8/9 of the CUSTOMS BULLETIN, published on March 3, 1999, Customs stated its intention to revoke NY A83830 and classify the "PitPacs" heating and cooling pads in subheading 1404.90.00, HTSUS, as a vegetable product not elsewhere specified or included. No comments were received in response to this notice.

In Volume 32, Number 48 of the CUSTOMS BULLETIN, published on December 2, 1998, Customs stated its intention to revoke NY 813748, dated August 29, 1995, which classified the "Magic Bag" in subheading 3005.90.50, HTSUS, the residual provision for wadding, gauze, bandages and similar articles and classify this merchandise in subheading 1004.00.00, HTSUS, as oats. Upon further review and consideration of this matter, we determined that this merchandise is not properly classified in subheading 1004.00.00, HTSUS. In Volume 33, Number 8/9 of the CUSTOMS BULLETIN, published on March 3, 1999, Customs stated its intention to revoke NY 813748 and classify the "Magic Bag" in subheading 1404.90.00, HTSUS, as a vegetable product not elsewhere specified or included.

One comment was received in response to the proposed revocation of NY 813748. The commentator argued that the described merchandise is an article similar to wadding, gauze and bandages pursuant to General Rule of Interpretation (GRI) 4, and that the merchandise is for a medical purpose. Therefore it should remain classified in heading 3005, HTSUS.

Customs maintains that vegetable matter encased in fabric has merely a tonic effect that does not rise to the level of "medical," and that it is not similar to wadding, gauze and bandages in that it is not intended for application to punctured or irritated skin. We further respond that the GRIs are applied in order, and that, as the merchandise is classified by virtue of GRI 3, GRI 4 is inapplicable.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY A83830 and NY 813748 to reflect the proper classification of heating and cooling pads consisting of vegetable matter encased in fabric. HQ 961089, revoking NY A83830, and HQ 962353, revoking NY 813748, are set forth as Attachments A and B, respectively. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this no-

tice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Dated: April 13, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, April 13, 1999.

CLA-2 RR:CR:GC 961089 MGM
Category: Classification
Tariff No. 1404.90.00

MR. JOHN SVEUM
TOWER GROUP INTERNATIONAL, INC.
P.O. Box 269
Sweetgrass, MT 59484

Re: "PitPacs" Heating and Cooling Pads; Revocation of NY A83830.

DEAR MR. SVEUM:

This office has determined that New York Ruling Letter (NY) A83830, issued to you on May 31, 1996, in response to your letter of May 13, 1996, on behalf of The Cherry Tree Ltd., requesting a ruling regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of "PitPacs" heating and cooling pads is in error. NY A83830 classified "PitPacs" heating and cooling pads in subheading 3005.90.50, HTSUS, the residual provision for wadding, gauze, bandages and similar articles. This ruling revokes NY A83830 and sets forth the correct classification of "PitPacs" heating and cooling pads.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was promulgated in Volume 32, Number 48 of the CUSTOMS BULLETIN, published on December 2, 1998. In that notice Customs stated its intention to revoke NY A83830 and classify this merchandise in subheading 1212.99.00, HTSUS, as fruit stones. Upon further review and consideration of this matter, we determined that this merchandise is not properly classified in subheading 1212.99.00, HTSUS. In Volume 33, Number 8/9 of the CUSTOMS BULLETIN, published on March 3, 1999, Customs stated its intention to re-

voke NY A83830 and classify the "PitPacs" heating and cooling pads in subheading 1404.90.00, HTSUS, as a vegetable product not elsewhere specified or included. No comments were received in response to this notice.

Facts:

The "PitPacs" heating and cooling pads consist of cherry pits, which have been washed and dried, and encased in a cotton bag. The bag may be 9″ x 9″, or 4.5″ x 18″. The descriptive literature which accompanies the product indicates that it may be heated in a microwave oven, standard oven, or double boiler, or cooled in a freezer. In its heated or cooled state, it is applied to the body to reduce tension, aches, and pains.

Issue:

Whether "PitPacs" heating and cooling pads are classified in heading 3005, HTSUS, as wadding, gauze, bandages and similar articles?

If not, does any other heading describe "PitPacs" heating and cooling pads?

If not, what material imparts the essential character to "PitPacs" heating and cooling pads?

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

In NY A83830, dated May 31, 1996, this article was classified in heading 3005, HTSUS. This heading provides as follows:

> 3005 Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

Under the rule of *ejusdem generis*, the phrase "similar articles" is limited to goods which "possess the essential characteristics or purposes that unite the articles enumerated *eo nomine*." *Totes, Inc. v. U.S.*, 69 F.3d 495, 498 (Fed. Cir. 1995) (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390 (Fed. Cir. 1994)). The characteristic which unites the exemplars of this heading is their direct application to an open wound or to irritated skin. Furthermore, this heading is limited to items which are for "medical, surgical, dental or veterinary purposes." While the instant product does purport to reduce tension, aches, and pains, the "PitPacs" heating and cooling comfort pad is more in the nature of a general tonic rather than an item with a definable medical purpose. Thus it is not properly classified in heading 3005, HTSUS.

Neither does any other heading of the nomenclature describe the "PitPacs" heating and cooling pad. Where goods cannot be classified according to GRI 1, the remaining GRIs are applied in order. GRI 2(b) states that "any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances * * * The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3(b) states that goods which are *prima facie* classifiable under two or more headings and consist of different materials or are made up of different components shall be classified as if they consisted of the material or component which gives them their essential character.

Factors which determine essential character may include bulk, quantity, weight, value, or the role of a constituent material in relation to the use of the goods. Explanatory Note

VIII to GRI 3. Here, the cherry pits provide the greater part of the item's bulk and weight. In addition, the cherry pits are not highly conductive of temperature, thus they retain the heat or cold for a period of time after removal from the heating source or freezer. Thus, the essential character of the "PitPacs" heating and cooling pad is found in the cherry pits.

The Harmonized System Committee (HSC) of the World Customs Organization (formerly the Customs Co-operation Council) has issued a report regarding the classification of "certain substances or materials put up in certain forms for specific use rather than general use" at its 22nd Session in November of 1998. HSC Nov. 98, 42.444. The decisions found in this report indicate that where a composite article, put up for a specific use, is classified according to the material which imparts the essential character to the merchandise, the merchandise is to be classified as an *article* of the material rather than as the primary form of the material. The Committee Report further stated that "the Committee had not decided on a general principle which would cover the classification of *all* products put up in certain forms for specific uses." These decisions did not result in an amendment to the Explanatory Notes nor in the issuance of a classification opinion

Decisions of the HSC are advice and guides to the interpretation of the Harmonized Schedule. The decisions are not binding, but Customs considers that they often provide valuable insight into how the HSC views certain provisions. Decisions which are merely given in the report are accorded relatively less weight than those decisions for which a classification opinion is issued and added to the Compendium of Classification Opinions or those decisions embodied as an amendment to the Explanatory Notes. *See*, T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

There is no precedent which directly addresses classification of composite products put up for specific uses, however the Court of International Trade has decided the classification of a product somewhat analogous to the "PitPacs" heating and cooling pad. *Pillowtex Corp. v. U.S.*, 983 FSupp 188 (C.I.T. 1997). In *Pillowtex*, the court classified comforters which consisted of an outer shell of woven cotton and stuffing of down. In choosing the appropriate subheading, the court considered classification as a "comforter of cotton" or as a comforter of "other" than cotton. The court referred to the principles of GRI 3 (b) in holding that it would be improper to classify the comforter as an "article of cotton" because its essential character was imparted by the down stuffing. Despite the down stuffing supplying the essential character, there is no mention of classification as down in its primary form. This suggests that the court views composite products for specific uses in a manner congruent with the HSC, that is, as articles of the material which imparts the essential character.

Thus it appears that the "PitPacs" heating and cooling pad is to be classified as an article of the material from which it draws its essential character. As there is no provision in the HTSUS for "articles of cherry pits," the "PitPacs" heating and cooling pad falls in heading 1404, HTSUS, as a "Vegetable product not elsewhere specified or included."

Heading 1404, HTSUS, is not limited only to raw vegetable materials. HQ 959719, dated October 21, 1997, classified decorative stickers consisting of dried flowers vacuum sealed between discs of plastics with an adhesive coating on one side. It held that the dried flowers provided the essential character of the article and the merchandise was therefore classified in heading 1404.90.00, HTSUS.

Holding:

The "PitPacs" heating and cooling pad is classified in subheading 1404.90.00, HTSUS.

NY A83830 is revoked. In accordance with 19 U.S.C. 1625 (c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, Aprl 13, 1999.
CLA-2 RR:CR:GC 962353 MGM
Category: Classification
Tariff No. 1404.90.00

MR. ROBERT F. DOMEY
FRITZ COMPANIES, INC.
100 Walnut Street
P.O. Box 2874
Champlain, NY 12919-2874

Re: The "Magic Bag" heating and cooling pad; Revocation of NY 813748.

DEAR MR. DOMEY:

This office has determined that New York Ruling Letter (NY) 813748, issued to you on August 29, 1995, in response to your letter of August 14, 1995, on behalf of Creations Magiques C.M. Inc., requesting a ruling regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the "Magic Bag" is in error. NY 813748 classified the "Magic Bag" heating and cooling pad in subheading 3005.90.50, HTSUS, the residual provision for wadding, gauze, bandages and similar articles. This ruling revokes NY 813748 and sets forth the correct classification of the "Magic Bag" heating and cooling pad.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was promulgated in Volume 32, Number 48 of the CUSTOMS BULLETIN, published on December 2, 1998. In that notice Customs stated its intention to revoke NY 813748 and classify this merchandise in subheading 1004.00.00, HTSUS, as oats. Upon further review and consideration of this matter, we determined that this merchandise is not properly classified in subheading 1004.00.00, HTSUS. In Volume 33, Number 8/9 of the CUSTOMS BULLETIN, published on March 3, 1999, Customs stated its intention to revoke NY 813748 and classify the "Magic Bag" in subheading 1404.90.00, HTSUS, as a vegetable product not elsewhere specified or included.

The only comment received was your letter, dated March 30, 1999, in which you argued that the described merchandise is an article similar to wadding, gauze and bandages pursuant to General Rule of Interpretation (GRI) 4, and that the merchandise is for a medical purpose, therefore the merchandise should remain classified in heading 3005, HTSUS. It is noted that the findings of the Food and Drug Administration, to which you refer, are not relevant for tariff classification purposes.

Facts:

The "Magic Bag" is a square or rectangle shaped bag which consists of cereal (oat) grains enclosed within 100% cotton fabric. The bags are designed to be heated in a microwave oven or cooled in a freezer, then applied to the body so as to heat or cool an area of the body. The product is indicated for use on the body in reduction of swelling and relief of aches and pains.

Issue:

Whether "Magic Bags" heating and cooling pads should be classified in heading 3005, HTSUS, as wadding, gauze, bandages and similar articles?

If not, are "Magic Bags" heating and cooling pads described by any other heading?

If not, what material imparts the essential character to "Magic Bags" heating and cooling pads?

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See,* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

In NY 813748, dated August 29, 1995, the "Magic Bag" was classified in heading 3005, HTSUS. This heading provides as follows:

> 3005 Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

Under the rule of *ejusdem generis*, the phrase "similar articles" is limited to goods which "possess the essential characteristics or purposes that unite the articles enumerated *eo nomine*." *Totes, Inc. v. U.S.*, 69 F.3d 495, 498 (Fed. Cir. 1995) (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390 (Fed. Cir. 1994)). The characteristic which unites the exemplars of this heading is their direct application to an open wound or irritated skin. Furthermore, this heading is limited to items which are for "medical, surgical, dental or veterinary purposes." The claimed reduction of swelling and relief of aches and pains provided by this product does not rise to the level of a medical treatment. Further, the requestor has not presented any evidence which suggests that physicians recommend the "Magic Bag" to their patients. Thus it is not properly classified in heading 3005, HTSUS.

Neither does any other heading describe the "Magic Bag," heating and cooling pad. Where goods cannot be classified according to GRI 1, the remaining GRIs are applied in order. GRI 2 (b) states that "any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances * * * The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 (b) states that goods which are *prima facie* classifiable under two or more headings and consist of different materials or are made up of different components shall be classified as if they consisted of the material or component which gives them their essential character.

Factors which determine essential character may include bulk, quantity, weight, value, or the role of a constituent material in relation to the use of the goods. Explanatory Note VIII to GRI 3. Here, the cereal grain provides the greater part of the item's bulk and weight. In addition, it is the grain which primarily retains the heat or cold for a period of time after removal from the heating source or freezer. Thus, the essential character of the "Magic Bag" cooling and heating pad is found in the cereal oat grain.

The Harmonized System Committee (HSC) of the World Customs Organization (formerly the Customs Co-operation Council) has issued a report regarding the classification of "certain substances or materials put up in certain forms for specific use, rather than general use" at its 22nd Session in November of 1998. HSC Nov. 98, 42.444. The decisions found in this report indicate that where a composite article, put up for a specific use, is classified according to the material which imparts the essential character to the merchandise, the merchandise is to be classified as an *article* of the material rather than as the primary form of the material. The Committee Report further stated that "the Committee had not decided on a general principle which would cover the classification of *all* products put up in certain forms for specific uses." These decisions did not result in an amendment to the Explanatory Notes nor in the issuance of a classification opinion

Decisions of the HSC are advice and guides to the interpretation of the Harmonized Schedule. The decisions are not binding, but Customs considers that they often provide valuable insight into how the HSC views certain provisions. Decisions which are merely given in the report are accorded relatively less weight than those decisions for which a classification opinion is issued and added to the Compendium of Classification Opinions or those decisions embodied as an amendment to the Explanatory Notes. *See,* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

There is no precedent which directly addresses classification of composite products put up for specific uses, however the Court of International Trade has decided the classification

of a product somewhat analogous to the "Magic Bag" *Pillowtex Corp. v. U.S.*, 983 F.Supp 188 (C.I.T. 1997). In *Pillowtex*, the court classified comforters which consisted of an outer shell of woven cotton and stuffing of down. In choosing the appropriate subheading, the court considered classification as a "comforter of cotton" or as a comforter of "other" than cotton. The court referred to the principles of GRI 3 (b) in holding that it would be improper to classify the comforter as an "article of cotton" because its essential character was imparted by the down stuffing. Despite the down stuffing supplying the essential character, there is no mention of classification as down in its primary form. This suggests that the court views composite products for specific uses in a manner congruent with the HSC, that is, as articles of the material which imparts the essential character.

Thus it appears that the "Magic Bag" heating and cooling pad is to be classified as an article of the material from which it draws its essential character. As there is no provision in the HTSUS for "articles of cereal" or "articles of oats," the "Magic Bag" heating and cooling pad falls in heading 1404, HTSUS, as a "Vegetable product not elsewhere specified or included."

Heading 1404, HTSUS, is not limited only to raw vegetable materials. HQ 959719, dated October 21, 1997, classified decorative stickers consisting of dried flowers vacuum sealed between discs of plastics with an adhesive coating on one side. It held that the dried flowers provided the essential character of the article and the merchandise was therefore classified in heading 1404.90.00, HTSUS.

Holding:

The "Magic Bag" cooling and heating pad is classified in subheading 1404.90.00, HTSUS, which provides for "Vegetable products not elsewhere specified or included."

NY 813748 is revoked. In accordance with 19 U.S.C. 1625 (c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF TOILETRY BAG AND TOILETRIES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of a toiletry bag and toiletries. The merchandise is a vinyl toiletry bag and facial creams and cleanser. The travel toiletry bag is imported from China into a Foreign Trade Zone (FTZ) in nonprivileged status. The bag is clear polyvinyl chloride (PVC) plastic, trimmed in gold-toned plastic including its handle. The bag's dimensions are 6½ by 3 by 4¾ inches. It has a short handle across the top of its rectangular shape, is zippered around the top edge, and resembles a small handbag or train case in appearance. In the FTZ, U.S. origin lotions and cleanser, full-sized and in plastic containers are placed in the bag with tissue paper, which in turn is packaged in a cardboard box. The bag and contents is exported from the FTZ and imported into the customs territory of the U.S.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Gail A. Hamill, Textiles Branch (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many section of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York ruling letter (NY) A80575, dated April 2, 1996, the toiletry bag in issue was classified under subheading 4202.92.4500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA) which provides for travel, sport and similar bags, of plastic sheeting. The U.S. origin toiletries packed therein were classified in subheading 9801.00.1098, which provided for U.S. origin goods returned after having been exported without having been advanced in value or improved in condition by any other means while abroad, other.

It is now Customs position that the skin care products of U.S. origin are not considered exported by virtue of admission into an FTZ in domestic status. They are put into the FTZ for purposes of packaging them in the toiletry bag and cardboard box, and as such, they are not considered mixed or combined in the FTZ with foreign bags as a result of their placement in those containers. There are no procedural requirements for their entry into the customs territory when packaged. 19 CFR 146.43(b)–(c). The bag and cardboard box must be entered in order to be brought from the FTZ into the customs territory. The cardboard box is classified and dutiable with the toiletry bag as GRI 5(b) packing material if of foreign origin. If it is of U.S. origin, the box remains classified with the toiletry bag, but would be entitled to the exemption in the second proviso to 19 U.S.C. 81c(a).

Because of the foregoing, notice of the proposed action was published in the CUSTOMS BULLETIN on March 3, 1999, Volume 33, No. 8/9. One comment was received.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), this notice advises interested parties that Customs is modifying NY A80575, in order to clarify that goods are not considered exported by virtue of admission into an FTZ in domestic status, nor are there any procedural requirements for their entry into the customs territory when packaged in various containers, but neither mixed nor combined therewith. Headquarters Ruling Letter (HQ) 959265, modifiying NY A80575, is set forth as the "Attachment" to this document.

Dated: April 9, 1999.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, April 9, 1999.

CLA–2 RR:CR:TE 959265 gah
Category: Classification
Tariff No. 4202.92.4500

MR. LOUIS S. SHOICHET
TOMPKINS AND DAVIDSON
ONE ASTOR PLAZA
1515 Broadway, 43rd floor
New York, NY 10036

Re: Modification of NY ruling A80575 dated April 2, 1996, plastic sheeting toiletry bag; FTZ; not a travel set of heading 9605, not a 3(b) set with U.S. origin toiletries.

DEAR MR. SHOICHET:

This is in regard to your letter of May 22, 1996, requesting reconsideration of New York ruling (NY) A80575 that was issued to you on April 2, 1996, which addressed the tariff classification of a Mother's Day toiletry gift set produced for Avon under the Harmonized Tariff Schedule of the United States, Annotated (HTSUSA). We have reviewed this ruling and determined that it is incorrect as to the treatment of U.S. goods combined with foreign goods in a Foreign Trade Zone and then entered into the customs territory of the United States.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), notice of the proposed modification of NY A80575 was published on March 3, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 8/9.

Facts:

The travel toiletry bag is imported from China into a Foreign Trade Zone (FTZ) in nonprivileged status. The bag, which is not specially shaped or fitted, is made of clear polyvinyl chloride (PVC) plastic, trimmed in gold-toned plastic including its handle. The bag's dimensions are 6½ by 3 by 4¾ inches. It has a short handle across the top of its rectangular shape, is zippered around the top edge, and resembles a small handbag or train case in appearance. In the FTZ, U.S. origin lotions and cleanser, full-sized and in plastic containers are placed in the bag with tissue paper, which in turn is packaged in a cardboard box. The bag and contents is exported from the FTZ and imported into the customs territory of the U.S.

Issue:

Whether the gift set is classifiable as a travel set of heading 9605, a set put up for retail sale, or separately classifiable by article?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

Nonprivileged foreign merchandise is subject to tariff classification in accordance with its character, condition, and quantity at the time of transfer from the FTZ to customs territory at the time the entry or entry summary is filed with Customs. 19 C.F.R. 146.65(a)(2). Therefore, the article to be classified is the complete gift set.

Heading 9605, HTSUSA, covers travel sets for personal toilet, sewing or shoe or clothes cleaning (other than manicure and pedicure sets of heading 8214). The heading's Explanatory Note (EN) describes travel sets in more detail. While the EN are not legally binding, they are instructive as to the intended scope of headings in the Harmonized System. T.D. 89–80, 54 F.R. 35127, 35128 (Aug. 23, 1989). The EN states that travel sets consist of articles individually falling in different headings of the nomenclature or consist of different articles of the same heading. The toiletry bag is classifiable in heading 4202, HTSUSA, the eye care cream, facial skin moisturizer and face cream are classified in heading 3304, HTSUSA, and the face cleanser is classified in heading 3402, HTSUSA.

Toilet sets are further described as a set of articles presented in a case of leather, fabric or plastics, containing, e.g., molded plastic boxes, brushes, a comb, scissors, tweezers, a nail file, a mirror, a razor holder and manicure instruments. While these are only exemplars, they suggest a range of implements and containers that aid in different aspects of one's personal toilet. Personal toilet is defined as pertaining to washing and dressing oneself. *See* 2 Compact Ed., Oxford English Dictionary 3342 (1987). The skin care articles at issue here form part of one's personal toilet, and thus meet this common meaning.

You argue that the skin care articles meet the requirements set forth in the EN for GRI 3(b) sets put up for retail sale, and that those criteria should apply in the finding of a travel set. Heading 9605 is a GRI 1 classification. As a legal matter, classification in that provision pertains if the goods at issue are specifically described therein, that is, they meet the terms of the heading, and any related legal notes. Resort to GRI 3(b) is not necessary for classification in heading 9605, and we decline to do so.

In your submission of May 22, 1996, you cite HQ 951486, in which we opined that the size of the case classifiable as part of a heading 9605 travel set need not be restricted to a size which could contain only the articles sold therewith. You extend that reasoning to the proposition that toiletry tubes, bottles or jars within 9605 travel sets need not be empty to remain a part of a travel set. We agree that such containers need not be empty. If they are, they should surely be refillable.

You argue that there is no basis to limit the size of a toiletry bottle or jar which may be included in a travel set. The skin care tubes and jars at issue are full-size for the goods they contain. Their contents are useful for weeks of skin preparation. The legal notes and EN do not specifically include or exclude consumable goods such as skin creams within the scope of travel sets. Therefore, it is within Customs purview to construe the tariff meaning of the term. We believe the commercial designation of travel set suggests that a toiletry cream may be in a travel set. We also believe that the attraction of a travel set is that it brings together consumable goods in the amount and size that will be needed for a trip. To carry more than is necessary is contrary to the point of a travel set as to consumable goods. There is nothing about the size of the toilet preparations that distinguishes them as specifically suited for travel. We find that the articles do not meet the description of a travel set for personal toilet.

GRI 3(a) indicates that when goods such as the ones at issue are classifiable in more than one heading, headings which refer to part only of the items put up for retail sale, the headings are to be regarded as equally specific. GRI 3(b) states that to meet the criteria of a set put up together for retail sale, articles must, *inter alia*, be put up for retail sale to meet a particular need or activity. The creams and lotions meet the activity of skin care. However, the toiletry case does not sufficiently relate to the other goods to form a set. It is twice as large as would be necessary to hold the toiletries and is designed to outlast their use. It provides an incentive to purchase the toiletries which is independent of its use with them. We

find an insufficient nexus between the bag and the toiletries to form a set put up for retail sale. The goods are therefore classified separately.

In NY A80575, we classified the skin care products in subheading 9801.00.1098, which provides duty free treatment for U.S. origin goods returned after having been exported without having been advanced in value or improved in condition by any other means while abroad. This is incorrect.

The skin care products of U.S. origin are not considered exported by virtue of admission into an FTZ in domestic status. They are put into the FTZ for purposes of packaging them in the toiletry bag and cardboard box, and as such, they are not considered mixed or combined in the FTZ with foreign bags as a result of their placement in those containers. There are no procedural requirements for their entry into the Customs territory when packaged. 19 CFR 146.43(b)–(c). The bag and cardboard box must be entered in order to be brought from the FTZ into the Customs territory. The cardboard box is classified and dutiable with the toiletry bag as GRI 5(b) packing material if of foreign origin. If it is of U.S. origin, the box remains classified with the toiletry bag, but would be entitled to the exemption in the second proviso to 19 U.S.C. 81c(a).

For your information, were they not of U.S. origin, the eye care cream, facial skin moisturizer and face cream would be classifiable in subheading 3304.99.5000, HTSUSA, as other preparations for the care of the skin. The face cleanser in turn would be classifiable in subheading 3402.20, HTSUSA, as a washing preparation put up for retail sale, specifically subheading 3402.20.1000, HTSUSA, if containing aromatic components (benzenoid compounds), or subheading 3402.20.5000, HTSUSA, if not. *See* Explanatory Note amending supplement five at 521 (Feb. 1998).

Holding:

The toiletry bag is classified in subheading 4202.92.4500, HTSUSA, which provides for other travel, sports and similar bags. The applicable general column rate of duty is 20 percent *ad valorem*.

There are no procedural requirements for entry into the customs territory of the domestic status eye care cream, facial skin moisturizer, face cream and face cleanser when packaged within the toiletry bag and cardboard box. The cardboard box is

classified and dutiable with the toiletry bag as GRI 5(b) packing material if of foreign origin. If it is of U.S. origin, the box remains classified with the toiletry bag, but would be entitled to the exemption in the second proviso to 19 U.S.C. 81c(a).

NY A80575 is hereby modified. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become affective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Richard W. Goldberg
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa Anne Ridgway

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Dominick L. DiCarlo

Nicholas Tsoucalas

R. Kenton Musgrave

Clerk

Raymond F. Burghardt

Decisions of the United States Court of International Trade

(Slip. Op. 99–29)

MICRON TECHNOLOGY, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT AND LG SEMICON CO., LTD., AND LG SEMICON AMERICA, INC., DEFENDANT-INTERVENORS

Court No. 97–02–00205

[Final Results in the second administrative review of an antidumping duty order of the U.S. Department of Commerce is sustained in part, and remanded in part.]

Dated: March 25, 1999

Hale & Dorr, LLP (Gilbert B. Kaplan, Michael D. Esch, Paul W. Jameson, and *Cris R. Revaz),* for plaintiff Micron Technology, Inc.

David W. Ogden, Acting Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Michele D. Lynch);* Office of the Chief Counsel for Import Administration, United States Department of Commerce *(Jeffrey C. Lowe),* of counsel, for defendant.

Kaye, Scholer, Fierman, Hays & Handler, LLP (Michael P. House and *Raymond Paretzky),* for defendant-intervenors LG Semicon Co., and LG Semicon America, Inc.

OPINION

GOLDBERG, *Judge:* In this action, the Court reviews two challenges to the Department of Commerce's ("Commerce") *Notice of Final Results of Antidumping Administrative Review: Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea,* 62 Fed. Reg. 965 (Jan. 7, 1997) *("Final Results").* More specifically, plaintiff, Micron Technology, Inc. ("Micron"), petitioner in the underlying administrative review, contests (1) Commerce's decision not to deduct from constructed export price ("CEP") an amount for indirect selling expenses incurred by respondent, LG Semicon Co., Ltd. and LG Semicon America, Inc. (collectively "LG Semicon"), in its home market; and (2) Commerce's methodology for the level of trade ("LOT") analysis in CEP cases.

The Court exercises jurisdiction to review this motion for judgment on the agency record pursuant to 28 U.S.C. § 1581(c) (1994). The Court sustains the *Final Results* in part, and remands in part.

I.

BACKGROUND

Micron, a U.S. manufacturer of dynamic random access memory semiconductors ("DRAMS"), filed a petition with Commerce on April 22, 1992, alleging that Korean producers of DRAMS were selling subject merchandise in the United States at less than fair value. Following an antidumping investigation, Commerce published an antidumping order on DRAMS from Korea in May, 1993. *See* 58 Fed. Reg. 27520 (May 10, 1993).

During the first anniversary month of the order, Micron and three Korean respondents, including LG Semicon, requested an administrative review of the DRAMS order. As a result of the first administrative review, Commerce assigned a dumping margin of 0.00% to LG Semicon.[1] *See* 61 Fed. Reg. 20,216, 20,222 (May 6, 1996). In the second anniversary month of the order, the parties again requested an administrative review of the order. Commerce initiated its second administrative review of the Korean DRAMS order on June 15, 1995, covering the period from May 1, 1994 through April 30, 1995. *See* 60 Fed. Reg. 31,448 (June 14, 1995). At the close of the second review, Commerce assigned a *de minimis* dumping margin to LG Semicon. *See Final Results*, 62 Fed. Reg. at 968. Micron again appealed these results, and it is this second administrative review that is the subject of the case at bar.[2]

Two aspects of Commerce's *Final Results* are of particular relevance to this appeal. First, Commerce determined that certain indirect selling expenses incurred by LG Semicon in Korea "do not result from or bear relationship to selling activities in the United States." 62 Fed. Reg. at 968 (cmt. 4). As a result, Commerce decided that LG Semicon's indirect selling expenses incurred outside the United States should not be deducted from LG Semicon's CEP.[3] The practical effect of Commerce's decision was a higher CEP and, thereby, a lower dumping margin.

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[1] Micron appealed several aspects of Commerce's decision with respect to LG Semicon for the first review period. In January of this year, the Court sustained part of Commerce's decision and remanded one issue to Commerce for further review. *See Micron Technology, Inc. v. United States*, Slip Op. 99–12 (CIT Jan. 28, 1999).

[2] Because Commerce initiated the review after January 1, 1995, the applicable law in the instant case is the antidumping code as amended by the Uruguay Round Agreements Act ("URAA"), Pub. L. No. 103–465, tit. II, 108 Stat. 4809 (1994). *See Torrington Co. v. United States*, __ Fed. Cir. (T) ____, ____, 68 F.3d 1347, 1352 (1995).

[3] Constructed export price or "CEP," along with exporter's price or "EP," is the statutory mechanism used to calculate what has traditionally been known as U.S. price. In turn, U.S. price anchors one end of the U.S. price to normal value comparison, from which a dumping margin is derived. Typically, an EP sale involves a direct sale from the foreign exporter to an unrelated U.S. purchaser, whereas a CEP sale is made to a related U.S. purchaser and then an unaffiliated party. All sales at issue in this proceeding are CEP sales. More specifically, Congress defined a CEP sale in Section 772(b) of the URAA as follows:

> The term "constructed export price" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

19 U.S.C. § 1677a(b). As relevant here, subsection (d) of this section provides that CEP shall be reduced by

> the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—
>
> (A) commissions for selling the subject merchandise in the United States;
> (B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;
> (C) any selling expenses that the seller pays on behalf of the purchaser; and
> (D) any selling expenses not deducted under subparagraph (A), (B), or (C).

19 U.S.C. § 1677a(d)(1). As discussed above, Commerce determined the expenses at issue here do not bear a direct relationship to U.S. sales and, hence, should not be deducted from CEP under section 1677a(d)(1).

Second, in accordance with the law as amended by the URAA, Commerce requested information from LG Semicon in order to conduct a level of trade analysis.[4] To assess level of trade in the second review period, Commerce first calculated a "constructed" CEP by deducting indirect selling expenses. Commerce then compared the "constructed" CEP sales to LG Semicon's normal value sales, which in this instance were home market sales. In doing so, Commerce determined that the sales in the two markets were at different levels of trade. Yet, because there was no basis upon which to determine if price differences existed between the two levels of trade, Commerce granted LG Semicon a "CEP offset," thereby reducing normal value by an amount for home market indirect selling expenses. *See supra* note 4.

Micron challenges both actions by Commerce. First, Micron contends that Commerce erred as a matter of law when it declined to deduct indirect selling expenses incurred outside the United States from CEP. Second, Micron maintains that Commerce's decision to adjust LG Semicon's CEP prior to making the level of trade comparison was methodologically unsound and contrary to law. Commerce and LG Semicon oppose both challenges to the *Final Results*.

II.

STANDARD OF REVIEW

Commerce's determination will be sustained if it is supported by substantial evidence on the record and is otherwise in accordance with law. *See* 19 U.S.C. § 1516a(b)(1)(B) (1994).

III.

DISCUSSION

A. *Commerce's Decision Not to Deduct Indirect Selling Expenses Incurred Outside the United States Was In Accordance With Law.*

Micron first contends that under the pre-URAA statute, indirect selling expenses incurred outside the United States were always deducted from U.S. price.[5] *See* Pl.'s Br. In Supp. Of Mot. for J. On Agency Rec., at 8–10. Indeed, Micron emphasizes that the court explicitly sustained the pre-URAA practice in *Silver Reed America, Inc. v. United States*, 12 CIT 39, 43–44, 679 F. Supp. 12, 16 (1998) (holding that Commerce could de-

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[4] In Section 773(a)(1)(B) of the URAA, Congress required Commerce to establish normal value "to the extent practicable, at the same level of trade as the export price or constructed export price." 19 U.S.C. § 1677b(a)(1)(B). Importantly, Congress also provided that when Commerce is unable to match sales at the same level of trade, an adjustment to normal value should be made to account for the differences in price that result from the differences in level of trade. *See* 19 U.S.C. § 1677b(a)(7)(A).

But, most importantly for purposes here, Congress provided that when the data indicate that normal value sales are at a more advanced level of distribution, yet are insufficient to warrant an adjustment under section 1677b(a)(7)(A), normal value still should be reduced by what is known as the "CEP offset." Specifically, Congress stated that when a level of trade adjustment is not warranted, yet normal value sales are at a more advanced level of distribution,

> normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made [to CEP].

19 U.S.C. § 1677b(a)(7)(B).

[5] Under the pre-URAA statute, Commerce calculated a respondent's U.S. price using either the "purchase price" ("PP") or "exporter's sales price" ("ESP"). These designations were amended under the URAA and are now referenced as "exporter's price" ("EP") and "constructed export price" ("CEP"), respectively. *See* Statement of Administrative Action to the URAA ("SAA"), H.R. Doc. No. 103-316 (1994), at 822.

duct selling expenses related to U.S. sales from ESP, regardless of where geographically the expenses were incurred). Micron then argues that because this section of the antidumping code was not amended by the URAA, Commerce's decision to deviate from its former practice and now exclude indirect selling expenses incurred outside the United States was not in accordance with law. Specifically, Micron notes that the URAA amendments had no substantive effect on the definitions for the terms used to calculate U.S. price. *Compare* 19 U.S.C. § 1677a(b) & (c) (1988) (defining "purchase price" and "exporter's sales price"), *with* 19 U.S.C. § 1677b(a) & (b) (1994 as amended) (defining "EP" and "CEP"). Micron also points out the SAA makes clear that "[n]otwithstanding the change in terminology, no change is intended in the circumstances under which export price (formerly 'purchase price') versus constructed export price (formerly 'exporter's sales price') are used." SAA at 822–23. Micron's syllogism thus runs, because Commerce always deducted indirect selling expenses from ESP, whether incurred inside the United States or not, and because the substantive provision governing the deduction of indirect selling expenses was not changed by the URAA amendments, Commerce's decision to alter its practice here was not in accordance with law.

Micron's argument cannot withstand scrutiny. As all parties concede, neither the pre-URAA statute, nor the statute as amended by the URAA, defines those selling expenses that should be categorized as "indirect" selling expenses. *Compare* 19 U.S.C. § 1677a(d)(1) (1988), *with* 19 U.S.C. § 1677a(d)(1) (1994). Because the statute is silent, the Court must look to see if Commerce's decision not to deduct the expenses at issue was reasonable.

The Court finds Commerce's decision was reasonable. It is true that Commerce previously construed the statutory silence to mean that all indirect expenses were "related to U.S. sales," regardless of where geographically they were incurred. And now, Commerce interprets "expenses associated with economic activities occurring in the United States" to mean only those expenses that bear a direct relationship to sales made to unaffiliated U.S. purchasers. Yet, Commerce's decision to revise its practice is reasonable in view of the SAA that accompanied the URAA. The SAA provides that under 19 U.S.C. § 1677a, deductions from CEP are limited to those expenses "*associated with* economic activities occurring in the United States." SAA at 823 (emphasis added). This language from the SAA plainly contemplates something more than the practice sustained in *Silver Reed*. That is, it is not enough simply to assert that the expenses are indirect selling expenses and, therefore, must be deducted from CEP. Rather, the SAA explains that the expenses must be linked to or "associated with" actual U.S. sales before they can be de-

ducted from CEP.[6] In addition, the Court finds that, contrary to Micron's argument, the relevant language from the SAA should not be dismissed as mere legislative history. As Commerce notes, Congress expressly approved the SAA as the authoritative expression governing application of the URAA in judicial proceedings. *See* 19 U.S.C. § 3512(d) (1994) (stating that the SAA is approved by Congress and that it is the authoritative expression of the United States concerning application of the antidumping statute as amended under the URAA). Thus, the Court finds that the SAA provided Commerce a reasonable basis upon which to alter the practice sustained by the court in *Silver Reed*.

Finally, and perhaps most importantly, in *Timken Co. v. United States*, 22 CIT ___, 16 F. Supp.2d 1102 (1998), the court upheld Commerce's current practice on this precise issue. In *Timken*, the court also noted that neither the pre-URAA statute nor the statute as amended address whether indirect selling expenses incurred outside the United States should be deducted from CEP. The *Timken* court similarly found Commerce's altered practice reasonable in light of the specific language in the SAA that only expenses "associated with economic activities occurring in the United States" should be deducted from CEP. *Id.* at ___, 16 F. Supp.2d at 1106. The Court here endorses the *Timken* analysis.

Accordingly, the Court finds Commerce's decision not to deduct the indirect selling expenses incurred by LG Semicon outside the United States from CEP was reasonable and in accordance with law.

B. *Commerce's Methodology Used to Conduct The Level of Trade Analysis for CEP Sales Was Not In Accordance With Law.*

Micron next argues that the methodology Commerce used to make the threshold level of trade analysis[7] was internally inconsistent. More precisely, Micron claims that Commerce applies one standard in EP situations and another in CEP situations without any statutory basis: (1) in EP situations, Commerce compares *unadjusted* EP sales (i.e., U.S. sales) to *unadjusted* normal value sales (e.g., home market sales) to assess level of trade; and (2) in CEP situations, Commerce compares the level of trade of "*adjusted*" or "*constructed*" CEP sales (i.e., U.S. sales) to *unadjusted* normal value sales to assess level of trade. In the CEP scenario, Commerce "adjusts" or "constructs" CEP sales by deducting the indirect selling expenses from CEP prior to making the level of trade comparison. Micron claims that there is no basis in the statute for the distinction between EP and CEP level of trade methodology and, hence, there is no legal basis to "adjust" or "construct" CEP prior to making the level of trade comparison. *See* 19 U.S.C. § 1677b(a)(7)(A). According to Micron, the tangible result of this unwarranted methodological dis-

[6] The Court notes that under Commerce's current practice, it is possible that indirect selling expenses incurred outside the United States may be deducted from CEP. Indeed, Commerce has deducted indirect selling expenses that, geographically, were incurred outside the United States, yet still bore a relationship to unaffiliated party sales in the United States; the court has sustained this practice. *See Mitsubishi Heavy Indus., Ltd. v. United States*, 22 CIT __, __, 15 F. Supp.2d 807, 818 (1998) (sustaining Commerce's decision to deduct indirect selling expenses incurred in Japan from CEP because the expenses were incurred to support U.S. sales and, hence, were "associated with" economic activities occurring in the United States).

[7] *See supra* note 4.

tinction is a deflated dumping margin. That is, Micron argues that because indirect selling expenses are "stripped" from CEP prior to the level of trade comparison, the home market level of trade will always be deemed more advanced in CEP situations, which in turn will result in a CEP offset and a downward adjustment to normal value. And, in sum, the potential dumping margin will decrease in CEP situations as a result of Commerce's current methodology.

Once again, the court addressed this precise issue in *Borden, Inc. v. United States*, 22 CIT ____, 4 F. Supp.2d 1221 (1998), *appeal docketed*, No. 99-__ (Fed. Cir. Feb. 12, 1999). The *Borden* court first observed that there is no statutory ambiguity in 19 U.S.C. § 1677b(a)(7), the level of trade provision. "The statute clearly provides for a *conditional* level of trade adjustment, instructing Commerce to make the adjustment to normal value if various conditions obtain[ ]. By contrast, the methodology employed by Commerce amounts to an unconditional adjustment in every CEP case." *Id.* at ____, 4 F. Supp.2d at 1240 (citation omitted). The court then specifically pointed out that the statute never mentions that adjustments for selling expenses should be made to CEP prior to the LOT analysis. *Id.* at ____, 4 F. Supp.2d at 1241. Importantly, the *Borden* court determined that, notwithstanding the statutory silence, Commerce could not inject its own view of the LOT provision because "Commerce's limited adjustment to price before the LOT analysis contravenes the purpose of the statute. The statute leaves no room for Commerce's ostensible discretion to pre-adjust for selling expenses in the United States through the automatic deduction of [indirect] selling expenses prior to the LOT analysis in all CEP cases." *Id.* The *Borden* court thus rejected the same methodology as that used in the instant case.

On this issue, the Court finds the reasoning articulated in *Borden* well developed and correct. The Court adopts that reasoning here and, in line with the *Borden* precedent, continues to hold that the methodology Commerce employed to conduct the level of trade analysis in this CEP case is contrary to law. The Court therefore remands this issue to Commerce for further review in light of its opinion.

IV.

CONCLUSION

For the foregoing reasons, the Court remands the *Final Results* to Commerce for further consideration as to the methodology to be used when it conducts the level of trade analysis in CEP situations. In all other respects, the Court sustains the *Final Results*. A separate Order will be entered accordingly.

(Slip Op. 99–30)

UMA IRON & STEEL CO., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 91–11–00825

(Dated April 1, 1999)

JUDGMENT ORDER

DICARLO, *Senior Judge:* The United States Department of Commerce submitted its *Results of Redetermination* in accordance with this Court's Remand order of May 13, 1994, in the case of *Uma Iron and Steel Co., et al. v. United States*, Consolidated Court No. 91–11–00825. The Department of Commerce requested this remand pursuant to the remand from the Court in *Creswell Trading Company, Inc., et al. v. United States*, Consol. Court No. 91–01–00012, Slip Op. 98–87. In its Redetermination of the 1988 administrative review, Commerce recalculated the company-specific subsidy rates by revising the rates relating to India's International Price Reimbursement Scheme (IPRS). The rates, however, did not change. Accordingly, the rates applicable to the 1988 period of review are as follows:

Uma Iron & Steel Co.	10.03%
Govind Steel	14.08%
All Others	4.10%

These rates have been stipulated to and accepted by all parties to this action.

The Court having reviewed the Redetermination Results, Commerce having complied with the Court's Remand, and the parties having stipulated to the rates, it is hereby

ORDERED that the Redetermination Results are affirmed; and it is further

ORDERED that the rates listed above shall be the rates for the 1988 period, and it is further

ORDERED that, as the parties have stipulated that they will not litigate any other issues, this action is dismissed.

(Slip Op. 99–31)

CARNATION ENTERPRISES P. LTD., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 91–11–00826

(Dated April 1, 1999)

JUDGMENT ORDER

DICARLO, *Senior Judge:* The United States Department of Commerce submitted its *Results of Redetermination* in accordance with this Court's Remand order of May 13, 1994, in the case of *Carnation Enterprises Ltd., et al. v. United States*, Consolidated Court No. 91–11–00826. The Department of Commerce requested this remand pursuant to the remand from the Court in *Creswell Trading Company, Inc., et al. v. United States*, Consol. Court No. 91–01–00012, Slip Op. 98–87. In its Redetermination of the 1989 administrative review, Commerce recalculated the company-specific subsidy rates by revising the rates relating to India's International Price Reimbursement Scheme (IPRS). The new company-specific and all other rates applicable to the 1989 period of review are as follows:

Carnation Enterprises Pvt. Ltd.	16.10%
UMA Iron & Steel Co.	16.22%
Govind Steel	20.36%
Tirupati	20.36%
Ragunath Prasad Phoolchand	20.36%
All Others	2.50%

These rates have been stipulated to and accepted by all parties to this action.

The Court having reviewed the Redetermination Results, Commerce having complied with the Court's Remand, and the parties having stipulated to the new rates, it is hereby

ORDERED that the Redetermination Results are affirmed; and it is further

ORDERED that the rates listed above shall become the new rates for the 1989 period, and it is further

ORDERED that, as the parties have stipulated that they will not litigate any other issues, this action is dismissed.

(Slip Op. 99–32)

EARTH ISLAND INSTITUTE, A CALIFORNIA NONPROFIT CORP., TODD STEINER, THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, A NEW YORK NONPROFIT CORP., THE HUMANE SOCIETY OF THE UNITED STATES, A DELAWARE NONPROFIT CORP., AND THE SIERRA CLUB, A CALIFORNIA NONPROFIT CORP., PLAINTIFFS *v.* WILLIAM M. DALEY, SECRETARY OF COMMERCE, MADELEINE ALBRIGHT, SECRETARY OF STATE, ROBERT E. RUBIN, SECRETARY OF TREASURY, MELINDA KIMBLE, ACTING ASSISTANT SECRETARY OF STATE FOR THE BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS; ROLLAND A. SCHMITTEN, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, AND STUART E. EIZENSTAT, UNDER SECRETARY OF STATE FOR ECONOMIC, BUSINESS AND AGRICULTURAL AFFAIRS, DEFENDANTS, AND NATIONAL FISHERIES INSTITUTE, INC., INTERVENOR-DEFENDANT

Court No. 98–09–02818

[Plaintiffs' motion to declare defendants in violation of embargo enacted by Congress granted, in part.]

Dated: April 2, 1999

Legal Strategies Group (Joshua R. Floum and *Louisa M. Daniels)* for the plaintiffs.

David W. Ogden, Acting Assistant Attorney General, and *Lois J. Schiffer*, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division *(Lucius B. Lau)* and Environment and Natural Resources Division, Wildlife and Marine Resources Section *(Eileen Sobeck* and *Jane P. Davenport)*, U.S. Department of Justice; and *Jay S. Johnson*, Deputy General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce; and Office of the Legal Advisor, U.S. Department of State *(Violanda Botet)*, of counsel, for the defendants.[1]

Garvey, Schubert & Barer (Eldon V.C. Greenberg) for the intervenor-defendant.

MEMORANDUM AND ORDER

AQUILINO, *Judge:* This case follows in the wake of legislation begun more than ten years ago in the Congress of the United States, followed by litigation in the U.S. District Court for the Northern District of California, continued in its Court of Appeals for the Ninth Circuit and then this Court of International Trade, followed by an appeal to the U.S. Court of Appeals for the Federal Circuit by the government and also by other nations' appeals to the World Trade Organization against the government. The complaint raises an issue first raised by the plaintiffs in case no. 94–06–00321 and resolved by this court *sub nom. Earth Island Institute v. Christopher*, 20 CIT ____, 942 F.Supp. 597 (1996), which decision[2] was vacated by the Federal Circuit some two years later on procedural grounds *viz. Earth Island Institute v. Albright*[3].

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[1] The official caption above reflects modification of names and offices pursuant to formal motion by these counsel and also by the court to conform to the administrative record ("AR") filed by them herein.

[2] That opinion and order will be referred to hereinafter as slip op. 96–165.

[3] 147 F.3d 1352 (Fed.Cir. 1998). The court of appeals also remanded to this court the issue of whether an award of attorneys' fees and expenses to the plaintiffs pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412, would be appropriate. That issue has been resolved per *Earth Island Institute v. Albright*, 22 CIT ____, Slip Op. 98–151 (Nov. 4, 1998).

I

The enactment of Congress which is at the core of this case and continuing controversy is found within the 1989 appropriations act for the Departments of Commerce and State, among others, Pub. L. No. 101–162, 103 Stat. 988, to wit:

> Sec. 609. (a) The Secretary of State, in consultation with the Secretary of Commerce, shall, with respect to those species of sea turtles the conservation of which is the subject of regulations promulgated by the Secretary of Commerce on June 29, 1987—
>
> (1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of such species of sea turtles;
>
> (2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which, as determined by the Secretary of Commerce, may affect adversely such species of sea turtles, for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species of sea turtles;
>
> (3) encourage such other agreements to promote the purposes of this section with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of such species of sea turtles;
>
> (4) initiate the amendment of any existing international treaty for the protection and conservation of such species of sea turtles to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section; and
>
> (5) provide to the Congress by not later than one year after the date of enactment of this section—
>
> (A) a list of each nation which conducts commercial shrimp fishing operations within the geographic range of distribution of such sea turtles;
>
> (B) a list of each nation which conducts commercial shrimp fishing operations which may affect adversely such species of sea turtles; and
>
> (C) a full report on—
>
> (i) the results of his efforts under this section; and
>
> (ii) the status of measures taken by each nation listed pursuant to paragraph (A) or (B) to protect and conserve such sea turtles.
>
> (b)(1) IN GENERAL.—The importation of shrimp or products from shrimp which have been harvested with commercial fishing technology which may affect adversely such species of sea turtles shall be prohibited not later than May 1, 1991, except as provided in paragraph (2).
>
> (2) CERTIFICATION PROCEDURE.—The ban on importation of shrimp or products from shrimp pursuant to paragraph (1) shall

not apply if the President shall determine and certify to the Congress not later than May 1, 1991, and annually thereafter that—

> (A) the government of the harvesting nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States; and
>
> (B) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or
>
> (C) the particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of such sea turtles in the course of such harvesting.[4]

When the government decided to enforce this statute only within the "Wider Caribbean/Western Atlantic region", Earth Island Institute *et al.* brought their original action, complaining, among other things, that, on its face, the statute required worldwide application. This court ultimately concurred, *Earth Island Institute v. Christopher*, 19 CIT 1461, 913 F.Supp. 559 (1995). The government was afforded a period of five months to begin to prohibit

> the importation of shrimp or products of shrimp wherever harvested in the wild with commercial fishing technology which may affect adversely those species of sea turtles the conservation of which is the subject of regulations promulgated by the Secretary of Commerce on June 29, 1987, 52 Fed.Reg. 24,244, except as provided in Pub. L. No. 101–162 §609(b)(2), 16 U.S.C. §1537 note, and to report the results thereof to the court.

19 CIT at 1485–86, 913 F.Supp. at 580. The government responded with a motion for an additional one-year extension of time to comply. The motion was denied, and a final judgment to the foregoing effect was entered. *See Earth Island Institute v. Christopher*, 20 CIT ____, 922 F.Supp. 616, *appeals dismissed*, 86 F.3d 1178 (Fed.Cir. 1996).

A

Soon thereafter, the State Department published *Revised Notice of Guidelines for Determining Comparability of Foreign Programs for the Protection of Turtles in Shrimp Trawl Fishing Operations*[5] and *Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101–162*, 61 Fed.Reg. 24,998 (May 17, 1996). The April 19 notice announced that the

> Department of State has determined that import prohibitions imposed pursuant to Section 609 do not apply to shrimp or products of shrimp harvested * * * by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States.

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[4] 103 Stat. at 1037–38, 16 U.S.C. §1537 note. This statute will be referred to hereinafter as section 609.

[5] 61 Fed.Reg. 17,342 (April 19, 1996) [hereinafter referred to as "1996 Revised Guidelines"].

* * * * * * *

> *Shrimp Exporter's Declaration*. The Department of State has determined that, in order to achieve effective implementation of Section 609 on a world-wide basis, beginning May 1, 1996, all shipments of shrimp and products of shrimp into the United States must be accompanied by a declaration (DSP–121, revised) attesting that the shrimp accompanying the declaration was harvested either under conditions that do not adversely affect sea turtles * * * or in waters subject to the jurisdiction of a nation currently certified pursuant to Section 609. All declaration[s] must be signed by the exporter of the shrimp. A government official of the harvesting nation must also sign those declarations asserting that the accompanying shrimp was harvested under conditions that do not adversely affect sea turtles. The declaration must accompany the shipment through all states of the export process, including in the course of any transshipments and of any transformation of the original product.[6]

Earth Island Institute *et al*. challenged this approach as "dangerous" and "disingenuous" because it

> eliminates any incentive for countries to put TEDs on more than a handful of nets. Countries can evade the Law's embargo by exporting to the United States those shrimp caught by a few designated vessels which are equipped with TEDs, while exporting elsewhere shrimp caught by those which are not. This eviscerates *both* of Congress' purposes in enacting the Turtle Law. It fails to create the level playing field which Congress undeniably sought for the U.S. fleet, which is required to put TEDs on *each and every* vessel. It also guts the Law's objective of protecting these endangered species—for substantial portions of the shrimping fleets of exporting nations may now eschew TEDs with impunity.

20 CIT at ___, 942 F.Supp. at 600–01. In other words, the plaintiffs contended that the State Department's regulations were not in conformity with the court's judgment, whereupon they moved the court to compel the government to "embargo *all* wild-caught shrimp exports from countries which do not adopt a regulatory scheme requiring TEDs that is comparable to that of the United States." 20 CIT at ___, 942 F.Supp. at 601.

The court concurred—in slip op. 96–165, familiarity with which is presumed. Noting that the "constitutional, legislated will of Congress remains unambiguous upon reading and rereading its manifestation in section 609"[7], that the statute is "succinct and should be read in toto"[8], and that the domestic, U.S. comparator was an underpinning of the

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[6] 61 Fed.Reg. at 17,343. The acronym "TEDs" refers to various turtle excluder devices. *See generally Earth Island Institute v. Christopher*, 19 CIT 1461, 1463 n. 1, 913 F.Supp. 559, 563 n. 1 (1995), and references cited therein.

[7] 20 CIT at ___, 942 F.Supp. at 603.

[8] *Id*.

judgment which had not been modified by the government[9], the court reiterated that the record still

> supports a finding that the requirement of TEDs on all vessels of a harvesting nation at all times results in a satisfactory rate of incidental taking of endangered species of sea turtles. In the absence of intelligence to the contrary, it remains *a fortiori* that requiring anything less than is comparable to the U.S. program violates section 609 and the court's judgment.

20 CIT at ____, 942 F.Supp. at 605.

The government and the intervenor-defendant National Fisheries Institute, Inc. ("NFI") appealed the court's resultant order of enforcement to the Federal Circuit, which, as indicated above, ultimately vacated it on the ground that Earth Island Institute *et al.* withdrew beforehand the motion which had caused consideration of entry of such necessary, additional, equitable relief and thereby deprived this court of any jurisdiction.[10] *But see* 28 U.S.C. §1585 ("The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States"); *United States v. Hanover Insurance Co.*, 82 F.3d 1052, 1054 (Fed.Cir. 1996) ("the Court of International Trade has the inherent power to determine the effect of its judgments and issue injunctions to protect against attempts to attack or evade those judgments"). *See also Bronson v. Shulten*, 104 U.S. (14 Otto) 410, 415 (1881) ("It is a general rule of the law, that all the judgments, decrees, or other orders of the courts, however conclusive in their character, are under the control of the court which pronounces them during the term at which they are rendered or entered of record, and they may then be set aside, vacated, modified, or annulled by that court"); *Wyler v. Union Pacific Ry. Co.*, 89 F. 41, 42 (C.C. W.D.Mo. 1898) ("during the term all the proceedings are in the breast of the judge, and they may be altered or vacated as justice requires"); *Union Trust Co. v. Rockford, R.I. & St.L. R. Co.*, 24 F.Cas. 704, 705 (C.C. N.D.Ill. 1874)(No. 14,401) ("the power of a court over its judgments, to set aside, modify or annul, is unlimited during the entire term at which such judgments are rendered"); *Sam v. State*, 265 P. 622, 623 (Ariz. 1928); *Banegas v. Brackett*, 34 P. 344, 344–45 (Cal. 1893); *Bradford v. People*, 43 P. 1013, 1015 (Colo. 1896); *Whitaker v. Wright*, 129 So. 889, 891–92 (Fla. 1930); *Tyler v. Eubanks*, 60 S.E.2d 130, 133 (Ga. 1950); *Durre v. Brown*, 34 N.E. 577, 578 (Ind.App. 1893); *Hallam v. Finch*, 195 N.W. 352, 353 (Iowa 1923); *Sylvester v. Riebolt*, 164 P. 176, 177 (Kan. 1917); *Fields v. Combs*, 18 S.W.2d 965, 966 (Ky. 1929); *Barber v. Barber* 98 A. 822, 823 (Me. 1916); *Harvey v. Slacum*, 29 A.2d 276, 277 (Md. 1942); *Morse v. Morse*, 154 P.2d 982, 984 (Mont. 1945); *Bradley v. Slater*, 75 N.W. 826, 826 (Neb. 1898);

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[9] 20 CIT at ____, 942 F.Supp. at 605.

[10] *Earth Island Institute v. Albright*, 147 F.3d 1352, 1356 (Fed.Cir. 1998). That court's vacatur for lack of jurisdiction also was held to apply to *Earth Island Institute v. Christopher*, 20 CIT ____, 948 F.Supp. 1062 (1996), which decision had been engendered by the appellants' motions for stays of the order of enforcement, pending their appeals therefrom, and which had been granted in part by this court. *But see* CIT Rule and Federal Rule of Civil Procedure 62 (Stay of Proceedings to Enforce a Judgment) and Federal Circuit Rule of Practice and Federal Rule of Appellate Procedure 8 (Stay of Injunction Pending Appeal) and cases decided thereunder.

Henderson v. Dreyfus, 191 P. 455, 457 (N.M. 1920); *Cook v. Western Union Tel. Co.*, 64 S.E. 204, 205 (N.C. 1909); *Maryland Cas. Co. v. John F. Rees Co.*, 40 N.E.2d 200, 202 (Ohio 1941); *Tillman v. Tillman*, 184 P.2d 784, 785 (Okla. 1947); *Bergman v. West*, 262 S.W.2d 435, 436 (Tex.Civ.App. 1953).

B

Notwithstanding such well-established precedent, the government appellants argued to the Federal Circuit that this court "lacked any jurisdiction to rule"[11] and "exceeded any authority it might have had to enforce its own order". Brief for Madeleine K. Albright *et al.*, p. 20 (Fed.Cir. Nos. 97–1085,–1086 Feb. 11, 1997). At the same time as those appellants were also arguing in Washington that this court "erred in its interpretation of the scope of section 609"[12], the government was on another tack before the consolidated panel established in Geneva by the Dispute Resolution Body of the World Trade Organization ("WTO") at the instance of Malaysia and Thailand, and Pakistan, and finally India, *sub nom. United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DSB/M/31 (12 May 1997). For example, the First Submission of The United States represented:

"A. Sea Turtles are a shared global resource

* * * 4. There has never been a clearer or more compelling case presented to the WTO for the conservation of an exhaustible natural resource or the protection of animal life or health than this dispute. For more than 20 years, there has been an international consensus * * * that sea turtles are endangered. The international community * * * has agreed that sea turtles need to be protected and conserved. Scientific research demonstrates that the accidental capture and drowning of sea turtles in shrimp trawl nets represents the single largest human-related cause of sea turtle deaths and has contributed greatly to the drastic demise of these species. Finally, the international community has recognized that the drowning of sea turtles in shrimp trawl nets can be virtually eliminated through the use of a simple, inexpensive device—the * * * 'TED'. The required use of TEDs has become a multilateral environmental standard.

5. The United States requires its shrimp fishermen to harvest shrimp in a manner that is safe for sea turtles. In this case, the United States only asks that shrimp imported into the United States should be harvested in a comparable manner. In this way, the U.S. market will not cause a further depletion of endangered sea turtle species. In this way, the United States is not forced to be an unwilling partner in the extinction of sea turtles.

6. Moreover, the U.S. measures at issue in this case appear to be effective in protecting and conserving sea turtles while not disrupting trade.

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[11] Brief for Madeleine K. Albright *et al.*, p. 17 (Fed.Cir. Nos. 97–1085,–1086 Feb. 11, 1997). *See also* Corrected Reply Brief for Madeleine K. Albright *et al.*, pp. 12–19 (Fed.Cir. Nos. 97–1085,–1086 June 1997).

[12] Brief for Madeleine K. Albright *et al.*, p. 25 *et seq.* (Fed.Cir. Nos. 97–1085,–1086 Feb. 11, 1997).

U.S. imports of shrimp have remained steady, and suppliers have had little difficulty adjusting their practices so as to ensure that exports of shrimp to the United States have been harvested in a manner that does not harm sea turtles.

* * * * * * *

B. Sea turtles are endangered

16. * * * Today, all species of sea turtles face the danger of extinction, primarily because of human activities. * * *

17. The international community has responded to the imperiled global status of sea turtles. Since 1975, all species of sea turtles have appeared on Appendix I to the Convention on International Trade in Endangered Species of Wild Flora and Fauna ("CITES"), which includes 'all species threatened with extinction which are or may be affected by trade.' Similarly, all species except the flatback are listed in Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals and in Appendix II of the Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Carribean Region.

18. Since the 1970s, all species of sea turtles that occur in waters subject to U.S. jurisdiction have been listed as either endangered or threatened under the U.S. Endangered Species Act of 1973 ("ESA").

C. Shrimp trawl nets are the largest human-induced cause of sea turtle mortality

19. Sea turtles face a variety of threats in both the marine and nesting environments. *However, the incidental capture and drowning of sea turtles in shrimp trawl nets has caused the greatest number of human-induced sea turtle deaths, accounting for more deaths than all other human activities combined.* For this reason, the Marine Turtle Specialist Group of the IUCN (World Conservation Union) identified reduction of sea turtle mortality in such trawling operations as a priority action item.

20. As early as 1982, it was recognized that 'shrimp trawlers are considered to capture and drown more sea turtles worldwide than any other form of incidental capture.' * * *

* * * * * * *

D. Turtle excluder devices (TEDs) effectively prevent the drowning of sea turtles in shrimp trawl nets

22. The turtle excluder device * * * is a simple, cheap and highly effective solution to the problem of sea turtle mortality in shrimp trawl nets. * * * TEDs * * * have been developed and manufactured on a commercial basis in a wide variety of nations.

23. The United States Government conducted a detailed, comprehensive study, involving thousands of hours spent by neutral observers aboard shrimp trawl vessels. Based on this study and its own exhaustive analysis, the U.S. National Academy of Sciences concluded in 1990 that

properly installed TEDs—of the sort required for use in the United States for more than seven years—are a practical and cost-effective way to minimize the unintentional drowning of sea turtles in shrimp trawl nets. *Properly installed TEDs approach 97 percent efficiency in allowing sea turtles to escape from shrimp trawl nets, while limiting shrimp loss rates to 1–3 percent.* * * *

24. TEDs are now widely used in shrimp trawl fisheries thoughout the Western Hemisphere. More recently, African and Asian countries have begun requiring their use as well. * * *

E. The use of TEDs has become a multilateral environmental standard

25. The use of TEDs has become a recognized multilateral environmental standard, fulfilling twin commitments on the part of the international community to conserve endangered species such as sea turtles and to minimize their unintentional mortality in fishing operations.

26. The international community has long recognized the need to protect endangered species such as sea turtles. There are now 134 nations that are parties to CITES. * * *

27. The international community has also long been aware of the threat to sea turtles and to other living resources as a result of their incidental mortality in marine fishing operations. The 1982 United Nations Convention on the Law of the Sea * * * generally requires States, both within areas under their national jurisdiction and on the high seas, to ensure through proper conservation and management measures that the maintenance of living resources is not endangered by over-exploitation. * * *

* * * * * * *

31. The countries in the Western Hemisphere understood that, because of the highly migratory nature of sea turtles, a treaty that afforded protection to sea turtles in only one region of the world would not succeed unless countries in other regions adopted comparable measures. For this reason, Article XX of the Inter-American Convention [for the Protection and Conservation of Sea Turtles[13]] encourages its parties to negotiate complementary protocols to that treaty with States in other regions in order to promote the protection and conservation of sea turtles outside the Western Hemisphere.

* * * * * * *

33. * * *[T]he required use of TEDs, both in Asia and throughout the Western Hemisphere, has become a multilateral environmental standard. Today, at least the following nations require TEDs on shrimp trawl vessels subject to their jurisdiction: Belize, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Indonesia, Mexico, Nicaragua, Nigeria, Panama, the People's Republic of China, Thailand, Trinidad and Tobago, the United States and Venezue-

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[13] 37 I.L.M. 1246.

la. Other nations in Asia and Africa have informed the United States of their intention or desire to establish TEDs programs.

34. One reason why TEDs use has become so widespread is that the United States Government has undertaken extraordinary efforts to transfer TEDs technology to governments and industries in other countries, particularly in developing countries. * * *

35. Through * * * workshops and related efforts, the United States has transferred TEDs technology to at least the following countries: Australia, Belize, Brazil, Brunei, Colombia, Costa Rica, Ecuador, El Salvador, Eritrea, Guatemala, Guyana, Honduras, India, Indonesia, Japan, Kenya, Mexico, Madagascar, Malaysia, Mozambique, Nicaragua, Panama, the People's Republic of China, the Philippines, Singapore, Suriname, Tanzania, Thailand, Trinidad and Tobago, and Venezuela. * * *

36. Recently, the United States intensified its TEDs technology transfer efforts. In 1996 alone, the United States conducted TEDs training workshops in Mombasa, Kenya; in Songkla, Thailand; in Tegal, Indonesia; in Guayaquil, Ecuador; and in Orissa, India. The workshop in Thailand * * * includ[ed] * * * fisheries managers and shrimp fishermen from Australia, Brunei, Japan, Malaysia, the Philippines, Singapore and Thailand. In 1997, * * * the United States * * * held TEDs workshops in Mombasa, Kenya * * *; in several locations in Australia; in Cochin, India; and in Chittagong, Bangladesh.

37. * * * TEDs have become a true environmental success story. * * * Their use is now a multilateral environmental standard.

F. TEDs are required in the United States to minimize sea turtle mortalities caused by shrimp trawling

38. The United States Government requires shrimp trawl vessels that operate in waters subject to U.S. jurisdiction in which there is a likelihood of intercepting sea turtles to use TEDs at all times.

39. * * * [A]ll species of sea turtles occurring in waters subject to U.S. jurisdiction are listed as endangered or threatened under the ESA. Under the authority of the ESA, NMFS[14] first required the use of TEDs by shrimp trawl vessels operating in U.S. waters on the basis of regulations promulgated in 1987, which went into full effect in 1990. The 1987 regulations required that all vessels 25 feet or longer must use TEDs when trawling for shrimp in offshore waters where there is a likelihood of intercepting sea turtles and that shrimp vessels less than 25 feet trawling in such offshore waters must use TEDs or restrict their tow time to 90 minutes or less. Tow times that short in duration are not likely to result in the drowning of captured sea turtles. Similarly, all vessels trawling for shrimp in such inshore waters were required to use TEDs or to limit tow times to 90 minutes or less. The regulations also set forth required specifications for TEDs, a primary requirement being a 97 percent exclusion rate of captured sea turtles.

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[14] National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

40. A 1990 U.S. National Academy of Sciences report on sea turtles * * * recommended tightening and extending the requirements for TEDs. NMFS accordingly promulgated even stricter TEDs requirements in 1992, which were implemented in three phases (late 1992, January 1993 and December 1994). Since December 1, 1994, these regulations have required the use of TEDs in all shrimp trawl nets, with very limited exceptions, and have eliminated the option for some small shrimp trawl vessels to restrict tow times in lieu of using TEDs. * * *

G. Without the use of TEDs, other measures to protect sea turtles are insufficient

41. * * * Any effective program to allow the recovery of these endangered species must include the required use of TEDs by shrimp trawl vessels that operate in areas and at times where there is a likelihood of intercepting sea turtles.

* * * * * * *

47. * * * [E]ven if * * * other measures taken * * * to protect sea turtles were effectively enforced, without the required use of TEDs, they would be insufficient to allow sea turtle populations in that region of the world to recover. These other conservation measures have not been shown to have any significant effect on the number of sea turtles that survive to adulthood and reproduce.

H. Section 609 promotes the protection and conservation of sea turtles

48. Because sea turtles migrate widely and are a shared global resource, U.S. domestic measures to protect sea turtles would not be effective unless shrimp exported to the United States by other nations is harvested in a manner that does not harm sea turtles.

* * * * * * *

50. Section 609 * * * ensures shrimp exported to the U.S. market is harvested in a manner that does not harm sea turtles. Section 609(b) prohibits the importation of shrimp or products from shrimp harvested with commercial fishing technology that may adversely affect species of sea turtles protected under U.S. laws and regulations * * *.

51. Following the enactment of Section 609 in 1989, the U.S. Government stepped up its campaign * * * to transfer TEDs technology to other countries. In addition, the U.S. Department of State developed a set of guidelines for determining the comparability of foreign programs for the protection of sea turtles in shrimp trawl fishing operations. The Department * * * provided copies of them to all affected governments. * * *

52. Until recently, the U.S. Administration implemented Section 609 based on the interpretation that it applied only to nations in the Wider Caribbean/Western Atlantic region. * * * The initial Department of State Guidelines, published in 1991 and revised in 1993, set forth the criteria for certification of these countries. The Department * * * established interim requirements for certification in the first years, designed to encourage the development of comprehensive TEDs programs in

these countries. As of May 1, 1994, certification depended on the implementation of such a comprehensive TEDs program.

53. On December 29, 1995, the U.S. Court of International Trade issued an order * * * requiring that Section 609 be applied on a global basis as of May 1, 1996. * * *

54. Following the * * * order * * *, the Department of State issued the current Guidelines to reflect the requirement to apply Section 609 on a global basis. * * * They make clear that the United States Government requires commercial shrimp trawl vessels in the United States to use TEDs in areas and at times when there is a likelihood of intercepting sea turtles.

* * * * * * *

61. For those shrimp harvesting nations * * * whose shrimp fishing environments *do* pose a threat to sea turtles, the Guidelines * * * set forth criteria upon which the Department of State bases its determinations for certification under Section 609. The Department * * * certifies any such nation as having a program to protect sea turtles in the course of shrimp trawl fishing comparable to the U.S. program if the nation requires the use of TEDs in a manner comparable to the TEDs requirements in effect in the United States and if the nation has a credible enforcement effort that includes monitoring for compliance and appropriate sanctions. Because TEDs, if used properly, allow at least 97 percent of captured sea turtles to escape from shrimp trawl nets, the Guidelines provide that any nation which adopts and enforces TEDs requirements comparable to those of the United States will also be deemed to have achieved a comparable 'incidental take rate' of sea turtles in its commercial shrimp trawl fisheries.

* * * * * * *

63. In 1997, the Department of State * * * certified forty-two shrimp harvesting nations pursuant to Section 609.

64. The Department of State has certified 24 nations as having shrimp fishing environments that do not pose a threat of incidental taking of sea turtles in the course of commercial shrimp trawl fishing. Of those 24 nations, the Department determined that the following 16 nations have shrimp fisheries in only cold waters where there is essentially no risk of taking sea turtles: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom and Uruguay. The Department certified the following eight nations on grounds that their fishermen only harvest shrimp using manual rather than mechanical means to retrieve nets: the Bahamas, Brunei, the Dominican Republic, Haiti, Jamaica, Oman, Peru and Sri Lanka.

65. The Department of State has also certified the following nations * * * as having adopted programs to reduce the incidental capture of sea turtles in shrimp fisheries comparable to the U.S. program: Belize, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Indonesia, Mexico, Nicaragua, Nigeria, Panama, the

People's Republic of China, Thailand, Trinidad and Tobago, and Venezuela.

I. The U.S. measures have not disrupted trade

66. The U.S. measures at issue in this dispute have not disrupted the importation of shrimp into the United States. Those measures went into effect with respect to the Complainants and other shrimp harvesting nations outside the Wider Caribbean/ Western Atlantic region on May 1, 1996. Even though the measures were in effect throughout the last two thirds of 1996, * * * U.S. shrimp imports in 1996 were within 1 percent of the average annual level from 1993–1995.

67. Furthermore, were the U.S. measures at issue in this dispute truly disruptive of trade, one would expect that a restriction in supply would result in a corresponding increase in the price of shrimp imports into the United States. The opposite has occurred. The average unit value of U.S. shrimp imports *declined* between 1995 and 1996, falling from $9.52 (U.S.) per kilogram to $9.30 (U.S.) per kilogram."[15]

This well-documented presentation was supplemented by the government, in part, as follows:

> * * * Section 609 is "made effective in conjunction with restrictions on domestic production or consumption." The Appellate Body interprets this criterion to mean that the measures concerned impose restrictions not just on the imported product but also with respect to the comparable domestic product. The Appellate Body has also stated that this requirement is one of "even-handedness," and that there is no textual basis for *identical* treatment of domestic and imported products.
>
> 61. These tests are met here. The United States requires its shrimp trawl vessels that operate where there is a likelihood of intercepting sea turtles to use TEDs at all times. Section 609 applies comparable standards to imported shrimp. The statute allows any nation to be certified—and thus to avoid any restriction on shrimp exports to the United States—if it meets criteria for sea turtle safety in the course of shrimp harvesting that are comparable to criteria applicable in the United States. In particular, for those nations whose shrimp trawl vessels operate in areas where there is a likelihood of intercepting sea turtles, Section 609 allows for certification if such nations adopt TEDs requirements comparable to those in effect in the United States.[16]

Notwithstanding these unrefuted, and largely irrefutable, averments[17], the dispute-resolution panelists from Brazil, Germany and Hong Kong did not accept the U.S. approach as completely consistent

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[15] *United States—Import Prohibition on Certain Shrimp and Shrimp Products* First Submission of The United States, WT/DSB/M/ 31, § III (June 9, 1997) (all emphasis in original; supporting citations omitted).

[16] *United States—Import Prohibition of Certain Shrimp and Shrimp Products* Second Submission of The United States of America, WT/DSB/M/31, paras. 60, 61 (July 28, 1997)(emphasis in original; citing *United States—Standards for Reformulated and Conventional Gasoline* Report of the Appellate Body, WT/DS2/AB/R (Jan. 29, 1996), and First Submission of The United States, paras. 50–62).

[17] *See United States—Import Prohibition of Certain Shrimp and Shrimp Products* Report of the Panel, WT/DS58/R (15 May 1998) *passim*; Submission of The United States (Appellant) Before The World Trade Organization Appellate Body, AB–1998–4, para. 5, p. 2 (23 July 1998)("The Panel in its findings does not take issue with the factual assertions of the United States").

with the 1994 General Agreement on Tariffs and Trade, concluding that it constituted

> clearly a threat to the multinational trading system * * * applied without any serious attempt to reach, beforehand, a negotiated solution.
>
> 7.502 We therefore find that the US measure at issue is not within the scope of measures permitted under the chapeau of Article XX.[18]

Whereupon the United States formally appealed to the WTO's Appellate Body on the ground that,

> [u]nder this improper reasoning, any measure falling under any one of the Article XX exceptions would nonetheless be outside the scope of Article XX if a Panel, in its own subjective view, believed that the measure hypothetically could cause harm to some undefined, idealized "trading system."
>
> 7. Not only is the Panel's adoption of this "threat to the multilateral trading system" test inconsistent with the text of the GATT 1994, * * * it also reflects a fundamental misinterpretation of the object and purpose of the World Trade Organization Agreement. The WTO Agreement, which was the first multilateral trade agreement concluded after the United Nations (UN) Conference on Environment and Development, provides that the rules of trade must not only promote expansion of trade and production, but do so in a manner that respects the principle of sustainable development and protects and preserves the environment. The Panel's "threat to the multilateral trading system" test would make trade concerns paramount to all other concerns, and is thus inconsistent with the object and purpose of the WTO Agreement.

Submission of The United States (Appellant) Before The World Trade Organization Appellate Body, AB–1998–4, paras. 6, 7 (23 July 1998) (footnote omitted). In doing so, it emphasized some of the facts quoted above at length and originally presented to the consolidated panel, including:

> The United States Government requires shrimp trawl vessels that operate in waters subject to U.S. jurisdiction in which there is a likelihood of intercepting sea turtles to use TEDs at all times. Because sea turtles migrate widely, U.S. domestic measures to protect

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[18] *United States—Import Prohibition of Certain Shrimp and Shrimp Products* Report of the Panel, WT/DS58/R, paras. 7.501, 7.502 (15 May 1998). Article XX provides, in pertinent part:

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
>
> * * * * * * * *
>
> (*b*) necessary to protect human, animal or plant life or health;
>
> * * * * * * * * *
>
> (*g*) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; * * *.

According to the Report of the Appellate Body in *United States—Standards for Reformulated and Conventional Gasoline*, WT/DS2/ AB/R, p. 22, the proper application of this article involves a two-tiered analysis: First, the regulation at issue must be "provisionally justified" by one of the enumerated exceptions—paragraphs (a) to (j). Second, the measure must satisfy the requirements of the introductory clauses, the article's *chapeau*. In other words, the measure, as applied, must not be either "arbitrary or unjustifiable discrimination between countries where the same conditions prevail", or "a disguised restriction on international trade".

> sea turtles would not be effective unless other nations also act to protect them. Accordingly, U.S. law (Section 609 of Public Law 101–162) calls for bilateral and multilateral efforts to protect sea turtles.

Id., para. 16 (footnotes omitted).[19]

II

Prior to issuance of the WTO Appellate Body Report, but after the mandate of the Federal Circuit had come down, the State Department determined to publish *Revised Notice of Guidelines for Determining Comparability of Foreign Programs for the Protection of Sea Turtles in Shrimp Trawl Fishing Operations*[20], perhaps in the hope of influencing the deliberations of that body before rendering its decision.[21] The notice advises of the Department's decision to "reaffirm", subject to "certain modifications"[22], its 1996 Revised Guidelines, the enforcement of which had been enjoined, in part, per this court's slip op. 96–165:

> The Department of State reinstates its determination that the harvesting of shrimp with TEDs does not adversely affect sea turtle species and that TED-caught shrimp is therefore not subject to the import prohibition created by Section 609(b)(1). * * * [H]owever, the Department * * * has decided to establish several conditions and incentives relating to the importation of such shrimp that are intended to address concerns that have been raised about the effect of this determination on the conservation of sea turtle species.

63 Fed.Reg. at 46,095. Those concerns are stated to be that foreign harvesters will fraudulently claim that shrimp have been harvested with TEDs, that foreign nations which have established regulatory programs comparable to the U.S. program will abandon or limit them so that only trawlers harvesting shrimp for export to the U.S. market will actually employ TEDs, and that other nations which may be considering the adoption of such a program may opt instead for equipping only those vessels trawling for shrimp for the American market. *See id.* Of course, as the Department indicates, only time might prove which of these materialize antithetically to the concerns of Congress in enacting section 609. For the moment, the world is apprised of the U.S. government's re-

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[19] While the Appellate Body did conclude that the consolidated panel had erred in finding that the U.S. approach is not within the scope of measures permitted under the *chapeau* of Article XX of the GATT 1994, and also in finding that accepting non-requested information from non-governmental sources is incompatible under the WTO dispute-resolution process, it also concluded, for reasons referred to hereinafter, that the

> United States measure, while qualifying for provisional justification under Article XX(g), fails to meet the requirements of the chapeau of Article XX, and, therefore, is not justified under Article XX of the GATT 1994.

United States—Import Prohibition of Certain Shrimp and Shrimp Products Report of the Appellate Body, WT/DS58/AB/R, para. 187 (12 Oct. 1998)(referred to and cited hereinafter as "WTO Appellate Body Report").

[20] 63 Fed.Reg. 46,094 (Aug. 28, 1998) [referred to hereinafter as "1998 Revised Guidelines"].

[21] *Compare, e.g.*, transcripts of telephone conference with counsel in this case on September 18, 1998, pp. 27–28 and of oral argument on December 14, 1998, pp. 59, 84, 101 *and* WTO Appellate Body Report, para. 5, p. 4 and n. 23 thereto, *with* AR Tab 6, first two pages (decision "done solely for domestic reasons"). Defendants' counsel have seen fit to repeat these words, first scribbled by defendant Eizenstat at the top of the State Department's "Action Memorandum", in their memorandum of law, pp. 7–8, 38 and at oral argument, Tr. p. 100, but without any hint as to what those reasons might have been. *See also* Dep't of State, *Notice of Proposed Revisions to Guidelines for the Implementation of Section 609 of Public Law 101–162 Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations*, 64 Fed.Reg. 14,481, 14,482 (March 25, 1999) [hereinafter referred to as "March 1999 Notice of Revisions"](''For reasons unrelated to the WTO case, the Department * * * modified its implementing Guidelines on August 28, 1998").

[22] 63 Fed.Reg. at 46,095.

surrected "decision to permit the importation of TED-caught shrimp from uncertified nations". *Id. See* March 1999 Notice of Revisions, 64 Fed.Reg. at 14,482.

A

This decision has brought forth the above-named plaintiffs, commencing this case via simultaneous filing of a summons and complaint and application for temporary restraining order and preliminary injunction. Among other relief[23], they request that the court declare that the resultant 1998 Revised Guidelines are in violation of the Administrative Procedure Act and section 609; enjoin the defendants

> from allowing the importation of shrimp and shrimp products from any nation with commercial fishing operations which may adversely impact sea turtles unless and until the Secretary of State determines and certifies * * * that the foreign nation has a current and enforceable sea turtle protection program (including the requirement that TEDs are used on *all* shrimp trawling vessels), and an incidental taking rate fully comparable to that of the United States at the present time[24;]

and order the Secretary of State to make publicly available all evidence supportive of a determination that a particular nation has a comparable regulatory program and rate of incidental taking of sea turtles.

The court afforded all parties an opportunity to be heard on plaintiffs' application for immediate injunctive relief. A temporary restraining order was denied, whereupon the plaintiffs have interposed a motion for judgment upon the record filed herein by the defendants.

The court's jurisdiction over this kind of case has been established to be pursuant to 28 U.S.C. §1581(i). *See Earth Island Institute v. Christopher*, 6 F.3d 648 (9th Cir. 1993), and *Earth Island Institute v. Christopher*, 19 CIT 812, 890 F.Supp. 1085 (1995). And it "shall review the matter as provided in section 706 of title 5"[25], U.S.C., which part of the Administrative Procedure Act authorizes the court, among other things, to set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(1)

As submitted, the record is represented to include all documents pertaining to the decision of Stuart E. Eizenstat, Under Secretary of State for Economic, Business and Agricultural Affairs, to revise the implementation of certain aspects of section 609, as reflected in the notice published by the Department[26], *supra*. It reveals that the decision was based upon the "Action Memorandum"[27] in the name of the Acting As-

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[23] *See generally* Plaintiffs' Complaint for Declaratory Judgment, Review of Agency Action, Mandamus and Injunctive Relief, § IX.

[24] *Id.*, p. 11, para. 5 (emphasis in original).

[25] 28 U.S.C. §2640(e).

[26] Declaration of David A. Balton, Director of the Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, para. 2.

[27] *See* AR Tab 6.

sistant Secretary of State for Oceans and International Environmental and Scientific Affairs, defendant Kimble herein. In a subsequent letter to NFI, she explains the crux of the decision to be:

> * * * We remain of the view, as we argued before th[e] Court [of Appeals for the Federal Circuit], that shrimp caught in trawl nets equipped with * * * TEDs[] are not "harvested with commercial fishing technology that may adversely affect" species of sea turtles. Such shrimp is thus not subject to the import prohibition that Congress established in Section 609.

AR Tab 11, p. 3. *See also* AR Tab 6, p. 3. According to the record, it was arrived at over the stated concerns and objections of a number of organizations committed to, if not expert in, the protection and preservation of endangered species[28], including the government's own NMFS, which is the organization within the Department of Commerce most directly involved in compliance with the mandate of Congress in section 609. The objections of the Assistant Administrator for Fisheries, defendant Schmitten herein, were articulated, in part, as follows:

> * * * NMFS does not believe that DOS should return to permitting the import of shipments of turtle excluder device (TED) caught shrimp from uncertified countries. We foresee several difficulties with this approach.
>
> We believe that this approach will significantly diminish the conservation benefit of P.L. 101–162, Section 609. By requiring that TEDs be used only on those vessels that harvest shrimp for export to the U.S. market, sea turtles will be put at greater risk of incidental capture aboard non-TED equipped boats in a nation's fleet.
>
> This approach will also reduce the incentive for nations to adopt comprehensive national programs to reduce the incidental take of sea turtles. The "shipment-by-shipment" authorization may also result in some certified nations abandoning the comprehensive programs they now have in place or curtailing enforcement of such programs.
>
> A "shipment-by-shipment" approach will also create enforcement problems. It will be extremely difficult to verify that shrimp being imported as TED-caught from uncertified nations were actually harvested by a trawler using a TED.

AR Tab 4, first page.

(2)

Whatever the underlying differences of opinion, defendants' stated position herein is that their 1998 Revised Guidelines are in accordance with section 609(b)(1), *supra*. In summary, they argue that the guidelines conform to the plain meaning of the statute, that its legislative history supports their interpretation, and that any ambiguity should be

[28] For example, the letter at AR Tab 1 to Secretary of State Albright and U.S. Trade Representative Barshefsky was signed by the heads of the Center for International Environmental Law, Center for Marine Conservation, Community Nutrition Institute, Defenders of Wildlife, Earth Island Institute, Earthjustice Legal Defense Fund, Environmental Defense Fund, Friends of the Earth, Greenpeace, Humane Society of the United States, National Wildlife Federation, Natural Resources Defense Council, and the Sierra Club.

resolved in a manner deferential to their administrative prerogatives and/or that affects the fewest nations and shipments possible, consistent with the doctrine articulated in *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804).

No doubt, this position, and that of the intervenor-defendant, derive from their presentations on the merits to the Court of Appeals for the Federal Circuit[29], which did vacate this court's slip op. 96–165 on the issue raised again herein, albeit on procedural grounds "deemed to be without prejudice"[30] to renewal. There also can be no doubt, and none of the parties argue otherwise, that

> [i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.

Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842–43 (1984); *Earth Island Institute v. Christopher*, 19 CIT at 1479, 913 F.Supp. at 575.

The primary focus of the initial litigation over section 609 was whether it was intended to be enforced worldwide, that is, "within the geographic range of distribution of [endangered] sea turtles"[31], or just within the wider Caribbean/ western Atlantic, which was the government's challenged initial preference and practice. The court held the statute's scope to be

> clear and unambiguous. * * * Its language includes "*all* foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which * * * may affect adversely [endangered or threatened] species of sea turtles" and "protection of specific ocean and land *regions* which are of special significance to the health and stability of such species of sea turtles" and "amendment of *any* existing international treaty for the protection and conservation of such species of sea turtles to which the United States is a party" and "*each* nation" which conducts commercial shrimp fishing operations within the geographic range of distribution of such sea turtles and which may affect them adversely. No language of section 609 restricts its geographical purview, nor can the court accept the premise that the statute is simply silent on the matter.

19 CIT at 1479, 913 F.Supp. at 575 (emphasis in original; footnotes omitted). Apparently, the defendants now adhere to this decision. *See, e.g.*, 1996 Revised Guidelines; 1998 Revised Guidelines; Part I B, *supra*; March 1999 Notice of Revisions.

That opinion of the court did uphold that part of the State Department's *Revised Guidelines for Determining Comparability of Foreign Programs for the Protection of Turtles in Shrimp Trawl Fishing Operations*, 58 Fed.Reg. 9,015, 9,017 (Feb. 18, 1993), which notified "affected

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[29] *See, e.g., supra* n. 12.

[30] 147 F.3d at 1356.

[31] Section 609(a)(5)(A), 103 Stat. at 1037, 16 U.S.C. §1537 note.

nations" that, to receive certification pursuant to section 609(b)(2)(A) and (B), *supra*, in 1994 and in subsequent years, they had "to require the use of TEDs on all of their shrimp trawl vessels" and that the take rates of sea turtles would be "deemed comparable if the[y] require that all shrimp trawl vessels use TEDs at all times". *See* 19 CIT at 1483–84, 913 F.Supp. at 578. That standard of comparison was based upon the requirement for U.S. trawlers[32] and is continued in the 1998 Revised Guidelines as a basis for certification of foreign harvesting nations. *See* 63 Fed.Reg. at 46,096. Indeed, the history of section 609's enforcement to date does not reveal presidential certification of such nations, including those of the wider Caribbean/western Atlantic region, to Congress under subsections (b)(2)(A) and (B) other than on that ground. Hence, Brazil, for example, has not been certified each year, even though individual trawlers flying its flag are and have been rigged with TEDs.[33]

It is the shrimp netted by such vessels around the world that is now granted entry to the expansive U.S. market by the 1998 Revised Guidelines on the ground quoted above, namely, the harvesting of shrimp with TEDs does not adversely affect sea turtle species. And the intervenor-defendant, if not all of the defendants, is of the view that this approach will encourage more vessels from uncertified countries to equip their nets with TEDs, thereby rescuing ever more endangered by-catch and also increasing the likelihood of presidential certification of additional home-port nations.

Whatever the appeal of this perception, the court cannot and therefore does not conclude that it comports with the expressed approach of Congress in section 609, which is notable for its clarity of purpose and cohesiveness of content. Certainly, Congress did not intend to, or in fact, leave room for the kind of reversal of course the defendants attempt to renew herein.[34] Indeed, prior to this court's judgment in *Earth Island*

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[32] *See generally* Dep't of Commerce, Nat'l Oceanic and Atmospheric Admin., *Sea Turtle Conservation; Shrimp Trawling Requirements*, 52 Fed.Reg. 24,244 (June 29, 1987).

[33] *Compare, e.g.*, Dep't of State, Bureau of Oceans and Int'l Environmental and Scientific Affairs, *Certifications Pursuant to Section 609 of Public Law 101–162*, 59 Fed.Reg. 25,697 (May 17, 1994)(Brazil certified because it "has established and is implementing the legal requirement to use TEDs"), *and* Dep't of State, Bureau of Oceans and Int'l Environmental and Scientific Affairs, *Certifications Pursuant to Section 609 of Public Law 101–162*, 62 Fed.Reg. 19,157 (April 18, 1997)(Brazil recertified because of regulation adopted "prohibiting shrimp trawling conducted in ways harmful to sea turtles"), *with Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101–162*, 61 Fed. Reg. 24,998 (May 17, 1996)(Brazil deleted from list of certified nations), *and Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Pub.L. 101–162*, 63 Fed.Reg. 30,550 (June 4, 1998)(Brazil did not retain certification because it "failed to demonstrate * * * regulations requiring the use of * * * TEDs[] were being adequately enforced").

[34] Defendants' record contains a letter from a member of Congress who had voted for section 609 in 1989 and who, now as Ranking Democratic Member of the Committee on Resources, U.S. House of Representatives, corresponded with President Clinton on June 23, 1998, in part, as follows:

> * * * I have grave concerns about the Administration implementing a shipment-by-shipment approach. Such an approach is not only unenforceable, it is inconsistentwith the clear congressional intent of P.L. 101–162, which requires certification that harvesting nations have adopted a regulatory program governing the incidental taking of such sea turtles that is "comparable" to that of the United States. As a result of hard work by Congress, the environmental community, and the National Marine Fisheries Service, the U.S. has implemented a comprehensive regulatory program to ensure that turtle excluder devices (TEDs) are used throughout the U.S. shrimp fishery. Thus, for purposes of certifying harvesting nations under P.L. 101–162, the Administration cannot merely attempt to satisfy itself that individual shipments have been harvested using TEDs; it must ensure that those nations have adopted comprehensive TEDs protections.

AR Tab 2, first page.

To the extent others in Congress may have a different opinion, none has been presented herein by the defendants. Be that as it may, the court has already found that section 609's legislative history, such as it is, does not sway intepretation of the adopted language. *See Earth Island Institute v. Christopher*, 19 CIT at 1421, 913 F.Supp. at 576.

Institute v. Christopher that the government was in violation of the intent of Congress that section 609 apply to shrimp shipments from everywhere in the world[35], not just the wider Carribean, the act was administered exclusively on an inter*national* basis, as recently explained at length to the WTO. Consistent with the mandate of section 609, paragraphs 61 and 64 quoted above show the United States has taken into account the "shrimp fishing environments" of harvesting nations that do and do not pose a threat to sea turtles, not their individual citizens or companies at work in those waters. Hence, Brazil, for example, with trawlers outfitted with TEDs, still has been found to be a harvesting nation with commercial fishing technology which "may" affect adversely the endangered species of sea turtles and thus within such expansive, "general" ambit of the section 609(b)(1) prohibition, *supra*, "except as provided in paragraph (2)." Given that clause in that context and the fact that general provisions rarely can be read to be dispositive of specific standards of a carefully-constructed statutory scheme, the court is constrained to conclude yet again that paragraph (1) of section 609(b) is specifically contingent upon the certification procedure established by section 609(b)(2), which offers the only congressionally-approved breaches of the embargo, either via subparagraphs (A) and (B) or through (C). Paragraphs (b)(1) and (b)(2) are *pari materia*; they cannot be read independently, or out of the context adopted by Congress, including section 609(a), to slow or stanch the extinction of species of sea turtles. And so long as the 1998 Revised Guidelines report that the "foundation of the U.S. program" continues, with "limited exceptions", to be that "all other commercial shrimp trawl vessels operating in waters subject to U.S. jurisdiction in which there is a likelihood of intercepting sea turtles must use TEDs at all times"[36], the catch of vessels equipped with TEDs from nations without such comparable foundation continues subject to embargo.

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[35] In fact, the government's disregard of this fundamental dictate of section 609, as reflected in subsection (a) thereof, *supra*, until ordered to cease and desist by the court in 1996, proved to be a predicate of the decision of the WTO Appellate Body, to wit:

> * * * The record does not * * * show that serious efforts were made by the United States to negotiate similar agreements [to the Inter-American Convention] with any other country or group of countries before (and, as far as the record shows, after) Section 609 was enforced on a world-wide basis on 1 May 1996. Finally, the record also does not show that the appellant, the United States, attempted to have recourse to such international mechanisms as exist to achieve cooperative efforts to protect and conserve sea turtles before imposing the import ban.
>
> 172. Clearly, the United States negotiated seriously with some, but not with other Members (including the appellees), that export shrimp to the United States. The effect is plainly discriminatory and, in our view, unjustifiable. The unjustifiable nature of this discrimination emerges clearly when we consider the cumulative effects of the failure of the United States to pursue negotiations for establishing consensual means of protection and conservation of the living marine resources here involved, notwithstanding the explicit statutory direction in Section 609 itself to initiate negotiations as soon as possible for the development of bilateral and multilateral agreements. The principal consequence of this failure may be seen in the resulting unilateralism evident in the application of Section 609. As we have emphasized earlier, the policies relating to the necessity for use of particular kinds of TEDs in various maritime areas, and the operating details of these policies, are all shaped by the Department of State, without the participation of the exporting Members. The system and processes of certification are established and administered by the United States agencies alone. The decision-making involved in the grant, denial or withdrawal of certification to the exporting Members, is, accordingly, also unilateral. The unilateral character of the application of Section 609 heightens the disruptive and discriminatory influence of the import prohibition and underscores its un justifiability.

WTO Appellate Body Report, paras. 171, 172 (citations omitted).

[36] 63 Fed.Reg. at 46,095. *See generally* Part I B, *supra*.

III

In the light of the foregoing, the court concludes that that part of the 1998 Revised Guidelines which constitutes the decision to permit the importation of TED-caught shrimp from un-certified nations, on its face, is not in accordance with section 609, *supra*. Before any entry of judgment on plaintiffs' motion herein, however, the court will await defendants' annual report to Congress pursuant to section 609(b)(2), their report to the court on any responses to their March 1999 Notice of Revisions, and the presentment of evidence on or before July 2, 1999 regarding the actual enforcement of the 1998 Revised Guidelines to date, as well as of the 1996 Revised Guidelines between April and November of 1996.

NOTE: Pursuant to the court's Procedures for Publication of Opinions and Orders, the court's unpublished order entered on March 30, 1999 is being published by the Clerk's Office as Slip Op. 99–33 on April 6, 1999.

(Slip Op. 99–33)

CIBA-GEIGY CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 95–09–01128

(Dated March 29, 1999)

ORDER

WALLACH, *Judge:* Upon consideration of Defendant's Motion To Amend The Judgment, the Court having reviewed the pleadings and papers on file herein, and good cause appearing therefor, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion To Amend The Judgment is granted, and it is further

ORDERED, ADJUDGED and DECREED that the Court's Judgment of December 29, 1998, is hereby amended by deleting the following paragraphs:

> ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Summary Judgment be, and hereby is, granted with respect to the classification of the Pergascripts within HTSUS Headings 3204 and 3215, but that Defendant's Motion for Summary Judgment is denied to the limited extent that it has failed to demonstrate that its ultimate classification of the Pergascripts within Heading 3204 was, in fact, correct; and it is further
>
> ORDERED, ADJUDGED AND DECREED that the parties may apply, as necessary, for any additional reasonable discovery period needed to demonstrate the correct classification of the Pergascripts within Heading 3204.

In their place, the following paragraphs are hereby substituted:

ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Summary Judgment be, and hereby is, granted, and it is further
ORDERED, ADJUDGED AND DECREED that this case is dismissed.

And it is further

ORDERED, ADJUDGED and DECREED that the decision of this Court in *Ciba-Geigy Corporation v. United States*, Slip Opinion 98–168, is hereby amended as follows:

- Page 1 (caption). The following paragraph is deleted:

  [On classification of five varieties of synthetic organic coloring matter, partial summary judgment for Defendant concerning classification within Headings 3204 and 3215. The Court denies Defendant's Motion, however, to the limited extent that it has failed to demonstrate that its ultimate classification within Heading 3204 was, in fact, correct.]

  In its place, the following paragraph is hereby substituted:

  [On classification of five varieties of synthetic organic coloring matter, summary judgment for Defendant concerning classification within Headings 3204 and 3215.]

- Page 2. The following paragraph is deleted:

  Currently before the Court is Defendant's Motion for Summary Judgment. The Court finds that as there is no genuine issue of material fact relevant to the classification of the Pergascripts within Heading 3215, this case is ripe for partial summary disposition pursuant to USCIT R. 56. Further, the Court finds that by operation of Note 1(a) to Chapter 32, HTSUS ("Note 1(a)"), the Pergascripts were properly classified by Customs under Heading 3204. There are, however, insufficient facts before the Court to verify that Customs' classification of the Pergascripts within Heading 3204 was correct. Accordingly, the Court denies Defendant's Motion to that limited extent.

  In its place, the following paragraph is hereby substituted:

  Currently before the Court is Defendant's Motion for Summary Judgment. The Court finds that as there is no genuine issue of material fact relevant to the question of whether the Pergascripts may be classified in Heading 3215, this case is ripe for summary disposition pursuant to USCIT R. 56. Further, the Court finds that by operation of Note 1(a) to Chapter 32, HTSUS ("Note 1(a)"), the Pergascripts were properly classified by Customs under Heading 3204. Accordingly, the Court grants Defendant's Motion For Summary Judgment.

- Page 4: The title "**Partial Summary Judgment Is Appropriate Because There Is No Genuine Issue As To Any Material Fact**" is hereby amended to read "**Summary Judgment Is Appropriate Because There Is No Genuine Issue As To Any Material Fact.**"

- Pages 13–16: Section III(C) of the Court's Slip Opinion, entitled "**Notwithstanding The Fact That the Pergascripts Were Properly Classified Under Heading 3204, It Has Not Been Demonstrated That The Pergascripts Were Properly Classified Under Subheadings 3204.19.40 And 3204.19.50**," is hereby deleted in its entirety (including footnote 9).
- Page 16: The following paragraph is deleted:

  For the foregoing reasons, Defendant's Motion For Summary Judgment is partially granted and denied to the extent set forth herein. The parties may apply, as necessary, for any additional reasonable discovery period needed for the limited purposes set forth herein.

In its place, the following material is hereby substituted:

For the foregoing reasons, the Court finds that, as the Pergascripts constitute separate chemically defined compounds, Note 1(a) to Chapter 32 precludes them from classification in Heading 3215. Accordingly, Defendant's Motion For Summary Judgment is granted, and this case is dismissed.

NOTE: This is to advise that Slip Op. 99–34 is not available for publication at this time due to the confidential nature of the document. A public version of the document will be released and published in the CUSTOMS BULLETIN when available.

(Slip Op. 99–34)

AMERICAN SILICON TECHNOLOGIES, ELKEM METALS CO., GLOBE METALLURGICAL, INC., AND SKW METALS & ALLOYS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND COMPANHIA BRASILEIRA ET AL., DEFENDANT-INTERVENORS

Consolidated Court No. 97–02–00267

(Dated April 9, 1999)

NOTE: This is to advise that Slip Op. 99–35 is not available for publication at this time due to the confidential nature of the document. A public version of the document will be released and published in the CUSTOMS BULLETIN when available.

(Slip Op. 99–35)

MUKAND, LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND AL TECH SPECIALTY STEEL CORP, ET. AL., DEFENDANT-INTERVENORS

Court No. 98–04–00925

(Dated April 9, 1999)

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C99/20 2/25/99 Goldberg, J.	AMKO	96–2–00374	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/21 2/25/99 Goldberg, J.	AMKO Int'l Trading Inc.	93–12–00814	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/22 2/25/99 Goldberg, J.	AMKO Int'l Trading Inc.	95–3–00251	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/23 2/25/99 Goldberg, J.	AMKO	95–9–01175	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/24 2/25/99 Restani, J.	EM Indus., Inc.	98–6–02298–S	3206.10.00, 3206.11.00, or 3206.19.00 6% 3206.49.20 8.6%, 9.3%, or 10% 3206.43.00 3.7% 6814.90.90 5.1%	3206.49.50 3.1%	Agreed statement of facts	Atlanta Pearlescent pigments
C99/25 2/25/99 Goldberg, J.	E.T.I.C., Inc.	96–2–00373	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/26 2/25/99 Goldberg, J.	E.T.I.C., Inc.	97–6–00939	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation

ABSTRACTED CLASSIFICATION DECISIONS—*Continued*

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C99/27 2/25/99 Carman, C.J.	Ohio Bag Corp.	95–2–00158, etc.	4202.92.4500 20% 4202.92.3030 20%	3924.90.55 3.4% 6307.90.55 7%	SGI, Inc. *v.* U.S., 122 F.3d 1468	New York Plastic articles and nylon articles
C99/28 2/25/99 Goldberg, J.	Orlando Food Corp.	94–1–00078	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/29 2/25/99 Goldberg, J.	Orlando Food Sales.	95–11–01440	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/30 2/25/99 Goldberg, J.	Rienzi & Sons	93–12–00806–S	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/31 3/4/99 Goldberg, J.	AMKO Int'l Trading Inc.	93–6–00347	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/32 3/4/99 Goldberg, J.	AMKO Int'l Trading Inc.	93–11–00755	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/33 3/4/99 Goldberg, J.	AMKO Int'l Trading Inc.	95–1–00099	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	Champlain Rouses Pt Canned tomato sauce preparation
C99/34 3/4/99 Goldberg, J.	AMKO Int'l Trading Inc.	97–3–00471	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation

C99/35 3/4/99 Goldberg, J.	Orlando	94–5–00291	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/36 3/4/99 Goldberg, J.	Orlando	94–9–00518	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/37 3/4/99 Goldberg, J.	Orlando Foods Corp.	95–6–00768	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/38 3/4/99 Goldberg, J.	Orlando Foods Corp.	95–11–01438	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/39 3/4/99 Goldberg, J.	Orlando Foods Sales, Inc.	96–4–01193	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/40 3/4/99 Goldberg, J.	Orlando Foods Sales, Inc.	96–4–01194	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/41 3/4/99 Goldberg, J.	Rienzi & Sons	94–9–00519	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/42 3/4/99 Goldberg, J.	Rienzi & Sons	94–9–00519–S	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/43 3/4/99 Goldberg, J.	Rienzi & Sons	95–3–00253	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation

ABSTRACTED CLASSIFICATION DECISIONS—*Continued*

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C99/44 3/4/99 Goldberg, J.	Rienzi & Sons	95–6–00766	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/45 3/4/99 Goldberg, J.	Rienzi & Sons	96–4–01196	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/46 3/5/99 Goldberg, J.	Rienzi & Sons	97–6–00940	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/47 3/5/99 Goldberg, J.	Rienzi & Sons	93–12–00806	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation
C99/48 3/5/99 Goldberg, J.	Rienzi & Sons	94–1–00077	2002.10.00 100% Pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, or 7.1%	Agreed statement of facts	New York Canned tomato sauce preparation

ABSTRACTED VALUATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V99/4 3/16/99 Ridgway, J.	Kamro Champion Lighting, Inc.	95–3–00243	Transaction value	At values equal to invoice unit values, funds as invoiced, plus 20%, less freight (if indicated), net, packed	Agreed statement of facts	Buffalo Lighting equipment
V99/5 3/18/99 Newman, S.J.	Sandvik, Inc.	81–11–01588	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/6 3/18/99 Newman, S.J.	Sandvik, Inc.	82–1–00100, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/7 3/18/99 Newman, S.J.	Sandvik, Inc.	82–3–00384, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/8 3/18/99 Newman, S.J.	Sandvik, Inc.	82–6–00782, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types

ABSTRACTED VALUATION DECISIONS—*Continued*

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V99/9 3/18/99 Newman, S.J.	Sandvik, Inc.	82–7–01025, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/10 3/18/99 Newman, S.J.	Sandvik, Inc.	82–7–01026, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/11 3/18/99 Newman, S.J.	Sandvik, Inc.	82–9–01231	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/12 3/18/99 Newman, S.J.	Sandvik, Inc.	82–12–01660, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/13 3/18/99 Newman, S.J.	Sandvik, Inc.	82–12–01677, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types

V99/14 3/18/99 Newman, S.J.	Sandvik, Inc.	82–12–01679, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/15 3/18/99 Newman, S.J.	Sandvik, Inc.	83–1–00156, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/16 3/18/99 Newman, S.J.	Sandvik, Inc.	83–3–00464, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/17 3/18/99 Newman, S.J.	Disston/Div. of Sandvik, Inc.	83–6–00818, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/18 3/18/99 Newman, S.J.	Sandvik, Inc.	83–11–01620, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types

ABSTRACTED VALUATION DECISIONS—*Continued*

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V99/19 3/18/99 Newman, S.J.	Sandvik, Inc.	83–11–01626, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/20 3/18/99 Newman, S.J.	Sandvik, Inc.	84–10–01416, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/21 3/18/99 Newman, S.J.	Sandvik, Inc.	84–10–01426, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/22 3/18/99 Newman, S.J.	Sandvik, Inc.	84–11–01687, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/23 3/18/99 Newman, S.J.	Sandvik, Inc.	84–11–01689, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types

V99/24 3/18/99 Newman, S.J.	Sandvik, Inc.	85–6–00781, etc.	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/25 3/18/99 Newman, S.J.	Sandvik, Inc.	85–8–01087	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/26 3/18/99 Newman, S.J.	Sandvik, Inc.	85–8–01405	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types
V99/27 3/18/99 Newman, S.J.	Sandvik, Inc.	85–11–01676	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with the entries herein, plus packing, without any addition for inland freight or any other charges incurred as a consequence of inland transportation of merchandise	Agreed statement of facts	New York Steel products of various types

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